INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Statute of the State of Iowa, the validity of which is involved	2
Date of judgment	5
Nature of case and rulings below	5
Manner in which the federal questions were raised and rulings of the Court which bring the case within the jurisdictional provisions relied on	7
Cases sustaining jurisdiction	12
The federal questions involved are substantial	13
Conclusion	14
Appendix "A"—Opinion of the District Court for Dubuque County, Iowa	15
Appendix "B"—Opinion of the Supreme Court of Iowa of February 10, 1948	26
Appendix "C"—Opinion of the Supreme Court of Iowa of December 14, 1948	78
Appendix "D"—Order of the Supreme Court of Iowa denying petition for rehearing	102

Table of Cases Cited

American Sugar Refining Co. v. *State of Louisiana*, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102	12
Connecticut General Life Ins. Co. v. *Johnson*, 303 U. S. 77, 58 S. Ct. 436, 82 L. Ed. 673	12
Fiske v. *State of Kansas*, 274 U. S. 380, 47 S. C. 655	12
Lawrence v. *State Tax Commission of Mississippi*, 286 U. S. 276, 52 S. Ct. 556, 76 L. Ed. 1102	13
Norfolk & W. R. Co. v. *Conley*, 236 U. S. 605, 35 S. Ct. 437, 59 L. Ed. 745	13

Statutes Cited

Code of Iowa, 1946, pp. 1228, 1229:	
Ch. 426.1	2
Ch. 426.2	2
Ch. 426.3	3

Page

Ch. 426.6 3
Ch. 426.7 4
Ch. 426.8 4
Ch. 426.9 5

Constitution of the State of Iowa:
Section 6, Article 1 ..... 6, 7, 8
Section 9, Article 1 8
Section 30, Article 5 7

Constitution of the United States, 14th Amendment, 6, 8, 12, 13
United States Code, Title 28, Section 1257(2) 13, 14

BLEED THROUGH—POOR COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 174

LAURA DICKINSON,

Appellant,

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, AND J. M. GRIMES, TREASURER OF STATE, OF THE STATE OF IOWA, ALLAN T. DAYKIN, COUNTY AUDITOR OF DUBUQUE COUNTY, IOWA, AND LEO J. MEUSER, COUNTY TREASURER OF DUBUQUE COUNTY, IOWA

STATEMENT AS TO JURISDICTION

Pursuant to the provisions of Rule 12 of the Supreme Court of the United States, Laura Dickinson, Appellant herein, files this statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment entered in this cause in the Supreme Court of the State of Iowa on March 11, 1949.

A

Statutory Provisions Sustaining Jurisdiction

The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment herein complained of is confirmed by Section 1257 Subsection 2 of Title 28 of United States Code.

B

Statute of the State of Iowa, the Validity of Which Is Involved

The statute of the State of Iowa, the validity of which is involved herein is Chapter 426 of the 1946 Code of Iowa as amended, pages 1228 and 1229, the pertinent provisions of which are as follows:

"426.1 *Agricultural land credit fund.* There is hereby created as a permanent fund in the office of the Treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1946, there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of five million dollars. Any balance in said fund on June 30 shall revert to the general fund.

426.2 *Definition.* "Agricultural lands" as used in this chapter shall mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes. Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than

BLEED THROUGH—POOR COPY

ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter.

426.3 *Where credit given.* The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the millage for the general school fund exceeds fifteen mills; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund fifteen mills, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided. The agricultural land credit as provided herein shall not be made to any taxpayer on any portion of his property upon which a homestead credit, as provided by Chapter 425, has been allowed for the year in which the agricultural credit is claimed.

426.6 *Computation by auditor.* On or before August 1 the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit hereunder together with the taxable value, and immediately upon receiving the certification of the budget from each school district shall determine the tax rate for the general fund of the district in the manner provided in Section 444.3, if the tax rate is in excess of fifteen mills he shall multiply the millage which is in excess of fifteen mills by the total taxable value of the agricultural lands entitled to credit hereunder in the district and on or before November 10

certify the amount thereof to the state comptroller. In the event the county auditor denies a credit upon any such lands, he shall immediately mail to the owner at his last known address notice of his decision thereon. • • •.

426.7 *Warrants drawn by comptroller.* After receiving from the several county auditors of the state the certifications provided for in Section 426.6, and on or before December 10, the state comptroller shall draw warrants on the agricultural land credits fund created by this chapter, payable to the county treasurers of the several counties of the state in the total amount certified by the county auditors of the respective counties and mail said warrants to the county auditors of said counties, provided that in the event the agricultural land credits fund is insufficient to pay in full the total of the amounts certified to the state comptroller on the tenth of November, he shall prorate the fund to the several county treasurers and notify the several county auditors of the prorata percentage at the time of mailing the warrants to them.

426.8 *Apportionment by auditor.* Upon receiving the warrant from the state comptroller the county auditor shall determine the amount thereof to be credited to each tract of agricultural land, and shall enter upon the tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit, the amount of said credit, and shall deliver the comptroller's warrant to the county treasurer with the tax lists. The county treasurer shall credit each school district with the total amount of the tax credits credited on lands in the district and shall show on each tax receipt the amount of tax credit for each tract of agricultural lands.

BLEED THROUGH—POOR COPY

426.9 *Pro rata disbursement.* If the appropriation herein is insufficient to pay the credits in full, then in that event they shall be paid on a pro rata basis."

C

Date of Judgment

The final judgment sought to be reviewed was entered by the Supreme Court of the State of Iowa, the highest court of the State of Iowa in which decision could be had, on March 11, 1949. Application for this appeal was presented and allowed June 2, 1949.

D

Nature of Case and Rulings Below

The statute in question sets aside five million dollars for each fiscal year to be used to pay all of the general school fund taxes in excess of fifteen mills on agricultural land as defined by the statute. The term "agricultural land" is defined in the statute to mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres and tracts of less than ten acres belonging to and a part of other lands of more than ten acres, lying within any school corporation in the State of Iowa and in good faith used for agricultural or horticultural purposes.

Under the statute in question owners of "agricultural land" as defined by the statute, are required to pay only a general school fund tax of fifteen mills on said property regardless of the amount of said tax actually levied in the school district in which the real estate is located. Owners of real estate not meeting the requirements of the statute

regardless of its type and the use to which it is put, are required to pay the general school fund tax levied thereon to the full extent of the millage rate.

Appellant, the owner of agricultural land of less than ten acres in size in Epworth School District, Dubuque County, Iowa, brought action in the District Court of Iowa in and for Dubuque County, challenging the constitutionality of said statute, Chapter 426 of the 1946 Code of Iowa, and asking the Court to enter a declaratory judgment decreeing said statute unconstitutional and void on the following grounds:

1. That said statute violates the provisions of Section 6, Article 1, and Section 30, Article 3 of the Constitution of the State of Iowa in that the law is of a general nature but not of uniform operation, throughout the State of Iowa. (Record on appeal to the Supreme Court of the State of Iowa, page 6.)

2. That the statute is in violation of Section 6, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws. (Record on appeal to the Supreme Court of the State of Iowa, page 8.)

3. That plaintiff-appellant is being deprived of money and property without due process of law in violation of Section 9, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States. (Record on appeal to the Supreme Court of the State of Iowa, page 10.)

Defendants-appellees, asserted the statute was constitutional.

BLEED THROUGH—POOR COPY

The district court declared the statute constitutional on January 6, 1947. A copy of the court's decision is appended hereto marked Appendix "A". Thereafter appeal was taken to the Supreme Court of the State of Iowa which court on February 10, 1948 entered a judgment and decree reversing the district court and sustaining the contentions of appellant. A copy of said judgment and decree is appended hereto marked Appendix "B". (The decision is reported in 31 N. W. (2d) 110.) Thereafter on December 14, 1948, the Supreme Court of the State of Iowa withdrew its previous judgment and decree and entered in its stead a judgment and decree holding that said statute was constitutional and that it was not violative of the Iowa Constitution or the Fourteenth Amendment to the Constitution of the United States. A copy of said judgment and decree is appended hereto marked Appendix "C". (The decision is reported in 35 N. W. (2d) 66.) Thereafter on March 11, 1949, a rehearing was denied appellant and the judgment and decree became final on that date. A copy of the order denying the rehearing is appended hereto marked Appendix "D".

E

Manner in Which Federal Questions Were Raised and Rulings of the Court Which Bring the Case Within the Jurisdictional Provisions Relied On.

The appellant asked the district court to enter a declaratory judgment decreeing said statute unconstitutional and void on the following grounds:

1. That said statute violates the provisions of Section 6, Article 1, and Section 30, Article 3 of the Constitution of the State of Iowa in that the law is of a general nature but not of uniform operation, throughout the State of Iowa. (Rec-

ord on appeal to the Supreme Court of the State of Iowa, page 6.)

2. That the statute is in violation of Section 6, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws. (Record on appeal to the Supreme Court of the State of Iowa, page 8.)

3. That plaintiff-appellant is being deprived of money and property without due process of law in violation of Section 9, Article 1 of the Constitution of the State of Iowa and Section 1 of the Fourteenth Amendment to the Constitution of the United States. (Record on appeal to the Supreme Court of the State of Iowa, page 10.)

The district court in its opinion stated that among the issues presented by the plaintiff-appellant, was the following allegation:

> "That said Act is in violation of Section 6, Article I. of the Constitution of Iowa and Section I. of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon which the same terms are not equally granted to all citizens of the State, and denies to certain persons the equal protection of the law. That plaintiff is being deprived of money and property without due process of law and in violation of Section 9, Article I. of the State Constitution and Section I. of the Fourteenth Amendment of the United States Constitution." (Appendix "A", page 16.)

In passing upon the federal questions raised the district court stated:

BLEED THROUGH—POOR COPY

"In so far as it is a tax exemption statute, and a law of general nature, it must have a uniform operation and must not grant to any citizen, or class of citizens, a privilege or immunity which upon the same terms shall not equally belong to all citizens, as required by Section 6 of Article 1. of the Iowa Constitution.

"Furthermore, it must not deny to any person within the jurisdiction of the State the equal protection of the laws, as guaranteed by Section I. of the Fourteenth Amendment to the Constitution of the United States" (Appendix "A", pages 21-22.)

The district court in rendering its judgment and decree held:

"This Court holds that the Act in question is not vulnerable to any of the constitutional objects raised against it in this proceeding" (Appendix "A", page 25).

The Supreme Court of the State of Iowa in the first majority opinion rendered in this case took issue with the district court on the federal questions having been presented, recognizing said federal questions in its summarization of appellant's attack upon the constitutionality of the statute in the following language:

"• • • that the Act is in violation of Sec. 6, Art. I of the Constitution of Iowa, and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws; (3) that plaintiff is being deprived of money and property without due process of law and in violation of Sec. 9, Art. I of the State Constitution and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States" (Appendix "B", page 27).

The Supreme Court of the State of Iowa in its first majority opinion found said statute to be in violation of Arti-

cle 1, Section 6 and Article 3, Section 30 of the Constitution of the State of Iowa in that the law was of a general nature but was of non-uniform operation throughout the state thereby granting to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state. The following language summarizes the reasoning and holding of the court:

> "Because we hold the statute violative of Art. I, sec. 6 and Art. III, sec. 30 of the Iowa Constitution, we need not go into the question of whether the statute also violates other provisions of the state or federal constitutions. • • •
>
> The argument of appellees is that this is an appropriation act and if it be considered as 'for local or private purposes' then it is still constitutional because the record shows it was passed by a two-thirds vote of the members elected to each branch of the General Assembly. Little need be said in answer to the argument. The above provision is not grant of authority to the legislature to enact any kind of an appropriation act by a two-thirds majority. • • • This is a law for the collection of taxes for state purposes. It violates section 30, Art. III, and it is not rendered constitutional because of the appropriation feature of the act." (Appendix "B", pages 43-4.)
>
> "We have held the exemption here granted is not for a public purpose. It necessarily follows that the legislative designation of the fund that was to pay the exemption, or the appropriation from state funds of $500,000.00 to pay the tax credits allowed by the act, would not be for a public purpose." (Appendix "B", page 45.)

The Supreme Court of the State of Iowa in its second majority opinion rendered with its judgment and decree withdrawing its first opinion and affirming the lower court considered and passed upon the federal questions involved herein.

BLEED THROUGH—POOR COPY

The court's summarization of appellant's attack upon the constitutionality of said statute is as follows:

> "Plaintiff, who owns a 4-acre tract used solely for agricultural purposes in Epworth School District, Dubuque County, challenges the Agricultural Land Tax Credit Act (Ch. 426, Code, 1946) on the grounds, insofar as here urged, it violates: (1) Article III, section 30, and Article I, section 6, Iowa constitution, and section 1 of the Fourteenth Amendment to the federal constitution in that the law lacks uniformity and provides arbitrary and discriminatory classifications, and (2) Article III, section 31, Iowa constitution, in that it appropriates public money for a private purpose. The trial court held the law was not unconstitutional upon the grounds urged and plaintiff has appealed." (Appendix "C", page 78.)

That the Supreme Court of the State of Iowa considered in its second majority opinion the federal questions raised by appellant, is shown by the following excerpts from the opinion:

> "Article III, section 30, and Article I, Section 6, of our state constitution, invoked by plaintiff, require that the law in question have a uniform operation throughout the state. The effect of section 1, Fourteenth Amendment to the federal constitution as applied to this case is substantially the same as these uniformity provisions of our own constitution. In general, if a law does not offend against one constitution it is inoffensive to the other." * * * Both in her petition and in argument here plaintiff's complaint is that the statute conflicts with the above constitutional provisions in that the classifications in the law are unreasonable and arbitrary. It is contended there is no basis for separately classifying (1) agricultural lands (2) of ten acres or more (3) in school districts where the millage exceeds 15 mills." (Appendix "C", page 82.)

The Supreme Court of the State of Iowa in affirming the lower court and in holding the statute constitutional stated as follows:

> "We conclude plaintiff has not demonstrated beyond a reasonable doubt the act in question violates, in the respects claimed, the constitutional provisions she has invoked. The decree is therefore affirmed." (Appendix "C", page 102.)

Therefore, the appellant, Laura Dickinson, respectfully submits that the federal questions herein involved were drawn in issue and considered by the district court and the Supreme Court of the State of Iowa throughout the entire course of the litigation involving the statute in question and that the Supreme Court of the State of Iowa has sustained the validity of the statute.

F

Cases Sustaining the Jurisdiction

The following cases sustain the jurisdiction of the Supreme Court of the United States:

1. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute is repugnant to the Fourteenth Amendment to the Constitution of the United States.

American Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102;

Connecticut General Life Ins. Co. v. *Johnson*, 303 U. S. 77, 58 S. Ct. 436, 82 L. Ed. 673;

Fiske v. *State of Kansas*, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108;

BLEED THROUGH—POOR COPY

Lawrence v. *State Tax Commission of Mississippi*, 286 U. S. 276, 52 S. Ct. 556, 76 L. Ed. 1102;

Norfolk & W. R. Co. v. *Conley*, 236 U. S. 605, 35 S. Ct. 437, 59 L. Ed. 745.

Therefore, the appellant, Laura Dickinson, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 1257 Subsection 2, Title 28 of the United States Code.

G

The Federal Questions Involved Are Substantial

The question to be resolved on this appeal is whether Chapter 426 of the 1946 Code of Iowa is or is not invalid and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The specific features of the statute, the constitutionality of which appellant attacks are (1) the arbitrary legislative classification, (2) the private purpose of the statute and the appropriation provided therein, and (3) the amount, manner and method by which the exemption or tax credit and the allocation of said funds to the school district is determined under the statute.

The substantiality of the federal questions herein involved cannot be doubted. The statute in question provides for the appropriation of five million dollars annually to pay for the tax credits provided in said statute. The money so appropriated is raised by general statewide taxation and every taxpayer of Iowa as well as the appellant herein has a vital interest in this matter.

Conclusion

It is respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 1257 Subsection 2 of Title 28 of the United States Code.

Respectfully submitted,

MARTIN M. COONEY,
705 Roshek Building,
Dubuque, Iowa,
Counsel for Appellant.

BLEED THROUGH—POOR COPY

APPENDIX "A"

IN THE DISTRICT COURT OF IOWA, IN AND FOR DUBUQUE COUNTY

January Term, A.D. 1947

LAURA DICKINSON, *Plaintiff,*

vs.

C. FRED PORTER, STATE COMPTROLLER OF THE STATE OF IOWA, J. M. GRIMES, TREASURER OF STATE, OF THE STATE OF IOWA, ALLAN T. DAYKIN, COUNTY AUDITOR, DUBUQUE COUNTY, STATE OF IOWA, LEO J. MEUSER, COUNTY TREASURER, DUBUQUE COUNTY STATE OF IOWA, *Defendants.*

No. 31113 Equity

DECLARATORY JUDGMENT

Now, on this 6th day of January, A.D. 1947, being one of the regular days of the January A.D. 1947 Term of the above entitled Court, the above named cause having been heretofore tried to the Court, at which trial the plaintiff was represented by Clewell & Cooney, Attorneys at Law, Dubuque, Iowa, and the defendants were represented by John M. Rankin, Attorney General of the State of Iowa; R. G. Yoder, First Assistant Attorney General for the State of Iowa; Oscar Straus, Assistant Attorney General for the State of Iowa; and Earl F. Wisdom, Attorney at Law, Des Moines, Iowa; also, E. G. Kean, County Attorney for Dubuque County, Iowa, and F. H. Becker, Assistant County Attorney for Dubuque County, State of Iowa.

The matter having been tried to the Court, evidence introduced, arguments of counsel heard, and the matter having been fully and finally submitted to the Court, and this Court, being fully advised in the premises, finds:

I—Issues

Plaintiff, Laura Dickinson, a resident owner of real estate in Dubuque County, Iowa, filed a petition and recast an

amended petition in Equity, challenging the constitutionality of the Act of the 51st General Assembly of Iowa—known as an Act for the Creation of the Agricultural Land Credit Fund, and known as Chapter 192 of the Acts of the 51st General Assembly, and asking that the Court enter a declaratory judgment declaring said Chapter unconstitutional and void on the following grounds:

I. That said Act violates the provisions of Section 30 of Article 3 of the Constitution of the State of Iowa, in that the same is a law of a general nature, but not of uniform operation, throughout the State of Iowa.

II. That said Act is in violation of the provisions of Section 6 of Article I of the Constitution of the State of Iowa, in that the same is a law of a general nature, but does not have a uniform operation throughout the State of Iowa; that said Act is unreasonable and lacking in uniformity in that it grants credit upon taxes upon certain agricultural lands located in School Districts in which the millage for the General School Fund exceeds 15 mills, while denying the same, or equal credit, upon taxes on certain agricultural land in School Districts where the millage for the General School Fund does not exceed 15 mills, where there is no difference between the character of the agricultural land, or the use to which it is put; that the Act grants credits upon taxes levied on certain lands in School Districts only when the land owned by the taxpayer exceeds 10 acres, and not laid off into lots of less than 10 acres, or divided by streets and alleys into parcels of less than 10 acres, and denies such credits on taxes levied on land in the same School District, where the land is less than 10 acres, or divided into parcels of less than 10 acres, regardless of whether it is used for agricultural purposes; that the Act grants credit on taxes levied on certain land in School Districts where no homestead tax credit is available to a taxpayer, but denies a credit on taxes of certain taxpayers within the School Districts where such taxpayers are entitled to receive Homestead Credit; that the Act grants credits on taxes paid by certain taxpayers owning agricultural land, as defined by the Act in excess of 10 acres, and not laid off in lots of less than 10 acres, or divided into

BLEED THROUGH—POOR COPY

streets and alleys into parcels of less than 10 acres located in School Districts where the millage for the General School Fund exceed 15 mills, but denies to all other taxpayers the same or similar credits where the millage for the General Fund does not exceed 15 mills, and subjects all taxable property within the State to taxation for the purpose of providing the credits granted under said Act; that the distinctions made under the Act, and the persons benefited thereby, amounts to an arbitrary and unreasonable classification, and grants credits upon taxes paid by a group of taxpayers, while denying such credits on taxes to other taxpayers similarly situated.

III. That said Act is in violation of Section 6, Article I of the Constitution of Iowa and Section I of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon which the same terms are not equally granted to all citizens of the State, and denies to certain persons the equal protection of the law. That plaintiff is being deprived of money and property without due process of law and in violation of Section 9, Article I of the State Constitution and Section I of the Fourteenth Amendment of the United States Constitution.

IV. That said Act violates the provisions of Section 31, Article 3, of the State Constitution in that the sole beneficiaries of the public funds appropriated by the Act are the owners of agricultural land of 10 acres or more that are not laid off into lots of less than 10 acres, or divided by streets and alleys into parcels of less than 10 acres, and property upon which a homestead credit has not been allowed and located in School Districts where the General School Fund levy exceeds 15 mills, thereby appropriating the funds of the State to the private purpose of paying a part of the taxes of certain property owners.

The defendants, by appropriate pleading, put in issue all the material allegations in plaintiff's petition, and allege as an affirmative defense:

(a) That by virtue of the provisions of the Act that the General Fund is fully reimbursed from the income, corporation and sales tax fund for all appropriations made

from the General Fund to the said Agricultural Land Credit fund.

(b) Allege that the facts stated in sub-sections 1, 2, 3 and 4 of paragraph 10 of plaintiff's petition each constitute and provide a proper and reasonable basis of classification.

(c) Allege that all classifications contemplated and provided for by said Act are proper, reasonable and just, and not violative of any of the constitutional provisions to which reference is made in plaintiff's petition.

(d) Deny that plaintiff has such an interest in the funds to be used in contemplation of said Act as to give her the legal right to maintain this cause of action, or, the relief demanded.

(e) Allege that the said Chapter 192 of the Acts of the 51st General Assembly, and known as House File 127, was enacted by the 51st General Assembly by a two-thirds vote of the members elected to each branch of the General Assembly for the 51st session thereof.

Replying to the affirmative defense of the defendants, plaintiff makes specific denial as to part, and as to the remainder alleges that the same does not state a defense to plaintiff's allegations for the reason that the General Fund of the State is not reimbursed from the Income, Corporation and Sales Tax Fund by any funds that are earmarked to take the place of the funds appropriated from the General Fund for the Agricultural Land Credit Fund, and further, that Section 10 of Chapter 192 purports to make such said transfer of funds collected under the provisions of Chapter 393.3, Code of 1939, when in fact there is no Chapter 393.3 in the 1939 Code of Iowa, or Amendments thereto.

II.—Analysis of the Statute

Before undertaking to pass upon the constitutionality of any statute, it is essential that the Court should first analyze the statute under attack in order to determine what it does; why it does it; the manner of doing it, and the effect of doing it.

BLEED THROUGH—POOR COPY

The Agricultural Land Tax Credit Act, enacted by the 51st General Assembly of the State of Iowa in 1945, and approved on April 10, 1945, became effective by operation of Section 53 of the 1939 Code of Iowa (now Section 3.7 of the 1946 Code of Iowa) on July 4, 1945, and consists of ten separate sections.

The Act creates a permanent State Fund known as the Agricultural Land Credit Fund. In order to establish and maintain this fund for each year, beginning July 1, 1946, the Act appropriates from the General Fund of the State the sum of $500,000.00 each year from funds in said General Fund not otherwise appropriated. In addition, said Act transfers to said General Fund for each year of the two years extending from July 1, 1945, to June 30, 1947 the sum of $500,000.00 from another State fund known as the Income, Corporation and Sales Tax Fund, which latter fund was created by what is commonly known as the Three-point Tax Law. The Act does not expressly state for what purpose this transfer is made, but by necessary implication it may be assumed that it is for the purpose of meeting and defraying the annual appropriation of $500,000.00, made by the Act, for the biennium designated therein. Thus it will be seen that the appropriation made by the Act is for each year in the future, while the transfer is only for the two years ending June 30, 1947.

Having thus created and provided for the establishment and maintenance of said Agricultural Land Credit Fund, the Act then provides that said fund is to be used for the purpose of giving a credit against the tax on each tract of agricultural lands within each School District in which the millage for the General School Fund exceeds 15 mills, the amount of such credit on each tract of such land being the difference between the tax levied for the General School Fund and the amount of tax on such tract computed at 15 mills.

For the purpose of the Act, agricultural lands are defined as all tracts of land of 10 acres or more lying within any school corporation in Iowa, which tracts are in good faith used for agricultural or horticultural purposes, and which tracts are not laid off into lots of less than 10 acres, or, which are not divided by streets and alleys into parcels of

less than 10 acres. Thus it is apparent that even if a tract exceeds 10 acres, it is not eligible for the credit if it is laid off into lots of 10 acres, and if streets and alleys cut it up into parcels of less than 10 acres. A further restriction upon said credit is that the credit cannot be made to a taxpayer on any portion of his property for any year in which a homestead credit is allowed to him for the year in which the agricultural credit is claimed. In order to obtain the credit, the taxpayer must each year deliver to the Assessor a verified statement and designation of his agricultural lands, or he may, each year and prior to June 1st, file such a statement and designation with the County Auditor, with supporting affidavits of two freeholders. If the credit is allowed, the State Comptroller draws warrants in said Land Credit Fund payable to the County Treasurer in the amounts certified by the County Auditors, and mail same to said County Auditors, and when the County Auditor receives the warrant he determines the amount of the warrant to be credited to each tract of agricultural land, and enters on the tax list as a credit against the tax levied on each such tract of agricultural land on which a credit has been allowed the amount of such credit and delivers the Comptroller's warrant to the County Treasurer with the tax list. Thereupon, the County Treasurer credits each School District with the total amount of the tax credits credited on lands in the District, and shows on each tax receipt the amount of the tax credit for each tract of agricultural land. If the appropriation made by the Act is insufficient to pay the credits in full, such credits are to be paid on a pro rata basis.

From the foregoing analysis, it clearly appears that this Act levies no tax, but that in essence and in fact it is purely an appropriation act appropriating public funds raised by taxation through the Income, Corporation and Sales Tax Act since it appropriates money from the General Fund of the State for the creation, establishment and maintenance of the Agricultural Land Credit Fund, and then transferred to said General Fund in like amount of money from the Income, Corporation and Sales Tax Fund, the net effect being, from a practical standpoint, the same as though the appro-

BLEED THROUGH—POOR COPY

priation had been made directly from the Three-Point Tax Fund in the first instance, without a transfer from one fund to the other, in so far as the two-year period during which the transfer accrues is concerned. It is to be noted, however, that the appropriation is made for each and every year in the future, while the reimbursing transfer is made for only the biennium designated therein.

The credit provided by this Act is a credit against the agricultural lands as defined by the Act, and is in all of its essential features and characteristics a tax exemption act. It is not a tax credit to the owner, but to the agricultural lands, although this results in benefit to the owner, and in this respect is analogous to the Iowa Homestead Credit Act as interpreted by the Iowa Supreme Court in Ahrweiler *vs.* Board, 226 Iowa 229.

In so far as the Act extends a credit to agricultural lands, as distinguished from lands not so defined, it directly benefits such agricultural lands, and thereby indirectly benefits the owners of non-agricultural land as defined. Farming is the basic industry of the State of Iowa, and it is an industry upon which the general welfare and prosperity of the inhabitants of the State depends.

Section 30 of Article 3 of the Iowa Constitution prohibits the General Assembly from passing a local or special law for the assessment and collection of taxes for State, County or Road purposes, and provides that in all such cases, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

The Act under consideration is not a law for the assessment and collection of taxes, as heretofore pointed out herein, but in one of its aspects it is a tax exemption statute, and as such it is subject to the constitutional limitation that it must not be a local or special law, but must be a general law and of uniform operation throughout the State. In so far as it is a tax exemption statute, and a law of general nature, it must have a uniform operation and must not grant to any citizen, or class of citizens, a privilege or immunity which upon the same terms shall not equally belong to all

citizens, as required by Section 6 of Article I of the Iowa Constitution.

Furthermore, it must not deny to any person within the jurisdiction of the State the equal protection of the laws, as guaranteed by Section I of the Fourteenth Amendment to the Constitution of the United States.

Section 31 of Article 3 of the Iowa Constitution forbids the appropriation of public money for local or private purposes, unless such appropriation be allowed by two-thirds of the members elected to each branch of the General Assembly, and the Agricultural Land Credit Act, in its aspect as an appropriation Act, is subject to this constitutional limitation.

III—General Principles, Findings and Conclusions of Law

In passing upon the constitutionality of this Act of the Legislature there are certain well-established fundamental principles to be borne in mind.

Any citizen taxpayer has sufficient interest in preventing the illegal expenditure of moneys raised by taxation to question the constitutionality of statutes requiring expenditure of public money.

When the constitutionality of a legislative act is challenged by a litigant the burden rests upon him to plead and prove facts showing why the legislation should thus be overthrown and rejected, and be entitled to the judgment he seeks.

It is the mandatory duty of the General Assembly of the State of Iowa to promote and encourage by all suitable means both Schools and Agriculture.

The law-making power is vested in the State Legislature, and the Courts cannot interfere with the exercise of that power and authority, unless the Legislature has usurped powers prohibited by the State or Federal Constitution; and, a statute will not be held unconstitutional unless its contravention of constitutional guaranties is so clear, plain and palpable as to leave no reasonable doubt on the subject, and every reasonable presumption is indulged in favor of the validity of a legislative act because the Legislature, which was first required to pass upon the question, acting

BLEED THROUGH—POOR COPY

with integrity and a just desire to keep within the restrictions laid down by the Constitution upon their action, have adjudged that it is so.

It is inherent in the exercise of the power to tax that a statute be free to select the subjects of taxation and to grant exemptions.

Inequalities, which result from singling out one or more particular classes for exemption, infringe no constitutional limitations. Like consideration governs exemptions of a tax imposed upon the members of a class.

A Legislature is not bound to tax every member of a class, or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis, if there is any conceivable state of facts which would support it. The Legislature may withhold the burden of a tax, in whole or part, in order to foster what it conceives to be a public benefit.

Classification, if reasonable for purposes of taxation, is not precluded by the Fourteenth Amendment to the Federal Constitution, insofar as it relates to equal protection of the law; in fact, the power to classify is undisputed so far as the equal protection clause of the Federal Amendment is concerned, and the only question is whether the classification is a proper one. All that equal protection of the law requires is that all in the same class shall be treated alike.

In its aspect as a tax exemption statute, the validity of this Act must hinge upon the classification of certain lands as subject to the exemption, and must depend upon whether or not such classification is reasonable under all the circumstances.

The only limitation upon the legislative power to exempt property from taxation is that there must underly the exercise of the power, some principle of public policy that can support a presumption that the public interest will be enhanced by the exemption granted, and the classification of the property exempted must be based on some reasonable ground, and some real difference, which bears a just and proper relation to the subject sought to be accomplished.

In order to be valid, legislation must treat alike under the same conditions all who are brought within its influence;

and, in its classification it must bring within its influence all who are under the same condtions, but, uniformity of operation does not depend necessarily upon the number of citizens affected, for if the law operates upon every person within the relation or circumstances provided for, the requirement of uniformity is met. Practical uniformity and equality is constitutional uniformity and equality. The classification, however, must be based upon apparent natural reason; some reason suggested by necessity; by such difference in the situation and circumstances of the subjects, placed in different classes, as suggests the necessity, or the propriety, of different legislation with respect to them, and if any state of facts reasonably can be conceived to sustain a classification adopted by a statute, the existence of those facts, when the law was enacted, must be assumed.

The presumption in favor of the constitutionality of statute is especially strong when the statute was enacted to promote a public purpose, such, for example, as statutes relating to taxation. It is well-settled that in the field of taxation, even more so than in other fields, the Legislature possesses the greatest freedom in classification.

The power of exemption implies the power of discrimination, and in the field of taxation classification is within the competency of the Legislature.

Section 6210, Code of 1939 (Section 404.4 of 1946 Code) of Iowa classifies lands within the limits of any city or town, not laid off into lots of 10 acres or less, or not subsequently divided into parcels of 10 acres or less by streets and alleys, and which is in good faith occupied and used for agriculture, or horticultural purposes, and limits taxation of such lands for city and town road purposes to not to exceed one and one-fourth mills. This classification was held reasonable by the Iowa Supreme Court at an early date, and is practically identical to the classification made by the Agricultural Land Credit Act, except that the early act classifies land in cities and towns, while the latter act classifies land in School Districts.

The Act under consideration is not a revenue raising act, since it neither imposes nor provides for the imposition of taxes. It relates to the disposition of taxes, or special

BLEED THROUGH—POOR COPY

funds, already levied and collected under other statutes, and provides for the transfer of portions thereof from the Special Fund to and for the use of the General Fund. In legislative parlance, such an act is denominated an Appropriation Act. The equal protection and equality and uniformity provisions of the State and Federal Constitutions do not apply to the expenditure of taxes, but only to the assessment and collection thereof. The only constitutional limitation upon the expenditures of public money is that it be appropriated for a public purpose, as distinguished from a local or private purpose, and the Iowa Constitution expressly provides that public money may be appropriated for local or private purposes, if such appropriation be allowed by two-thirds of the Members elected to each branch of the General Assembly. By stipulation herein, it is shown that the present Act was passed by the 51st General Assembly by a two-thirds vote of the members elected to each branch of said General Assembly.

This Court is of the opinion that the Act in question appropriates public money for the sole purpose of aiding Agriculture, and is, therefore, an appropriation for public purpose.

If it could be said that the appropriation made by the Act is for a local or private purpose, then, since the Act was passed by a two-thirds vote of the Members elected to each branch of the General Assembly, it was passed as required by Section 31, Article 3, of the Iowa Constitution.

This Court holds that the Act in question is not vulnerable to any of the constitutional objects raised against it in this proceeding.

Judgment is hereby rendered in favor of the defendants, and plaintiff's petition is dismissed at plaintiff's costs.

Exceptions are saved to plaintiff.

JOHN G. CHALMERS,
Judge District Court, 19th Judicial District of Iowa.

APPENDIX "B"

IN THE SUPREME COURT OF IOWA

Filed Feb. 10, 1948

142
47072

LAURA DICKINSON, *Appellant*,

v.

C. FRED PORTER, State Comptroller of the State of Iowa, and J. M. GRIMES, Treasurer of State of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa, *Appellees*

Appeal from Dubuque District Court—John G. Chalmers, Judge

Declaratory judgment action testing the constitutionality of the Agricultural Land Tax Credit law (Chap. 192, Laws of the 51st G.A.; Chap. 426, Code, 1946) under various provisions of the Iowa and Federal Constitutions. The trial court held the act constitutional.—Reversed.

Clewell & Cooney, of Dubuque, for appellant.

Robert L. Larson, Attorney General of Iowa, Jas. A. Lucas, First Assistant Attorney General of Iowa, Oscar Strauss, Assistant Attorney General of Iowa, Wisdom & Wisdom, of Des Moines, and F. H. Becker, County Attorney of Dubuque County, for appellees.

MULRONEY, *C. J.*

Plaintiff, the owner of a three acre tract of land, used solely for agricultural purposes, in Epworth School District, in Dubuque County, filed her petition challenging the constitutionality of the Act of the 51st General Assembly of Iowa, known as the Agricultural Land Tax Credit law (Chap. 192, Laws of the 51st G.A.; Chap. 426, Code, 1946) and asking the court to enter a declaratory judgment declaring said act unconstitutional and void on the following grounds: (1) that said act violates the provisions of Sec.

BLEED THROUGH—POOR COPY

6, Art. I and Sec. 30, Art. III of the Constitution of the State of Iowa, in that the law is of a general nature, but not of uniform operation, throughout the State of Iowa; (2) that the Act is in violation of Sec. 6, Art. I of the Constitution of Iowa, and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, in that it grants to citizens and classes of citizens privileges and immunities upon terms not equally granted to all citizens of the state, and denies to certain persons the equal protection of the laws; (3) that plaintiff is being deprived of money and property without due process of law and in violation of Sec. 9, Art. I of the State Constitution and Sec. 1 of the Fourteenth Amendment to the Constitution of the United States.

Defendants, the state and county officers charged with duties under the act, assert the act is not violative of the above constitutional provisions. The evidence consisted largely of tabulations, which will be referred to later. The trial court declared the act constitutional and plaintiff appeals.

The act in question set aside $500,000.00 for the fiscal year commencing July 1, 1946, and the same amount annually thereafter from the General Fund of the state to be used to pay all of the general school fund taxes in excess of 15 mills on agricultural lands. If said fund was insufficient the act provides for payment on a pro rata basis. The term "Agricultural lands" is defined in the act to "mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes."

We have often expressed the rule which guides a court in determining whether or not a certain statute violates some constitutional provisions. In Santo *v.* State of Iowa, 2 Iowa 165, this court first stated the rule as follows:

"For some time after the establishment of the state government, it was doubted whether the judiciary possessed authority to declare and hold an act of the legislature unconstitutional and void, and the exercise of the power was declined by some courts. And now, although the power is

universally admitted, its exercise is considered of the most delicate and responsible nature, and is not resorted to, unless the case be clear, decisive, and unavoidable."

There has been no departure in the expressions of this court from the rule first stated in the Santo case.

I. The act in question is a plain tax exemption statute. It frees certain land from a tax burden. The fact that the property is relieved of the burden after assessment and levy is immaterial. It is the result, not the method that determines the character of the act. It is no less a tax exemption statute because the burden is assumed by the state. The point is that the agricultural property in some of the school districts of the state is relieved of part of the tax burden by this law. As to such property the act is a tax exemption statute. There is no special limitation of power as to tax exemption in the Iowa constitution, as there is in many state constitutions. But that does not mean the power of the state to exempt property from taxation is unlimited. The power to tax includes the power to exempt, and in the absence of constitutional restrictions on exemptions the state's power to exempt is subject only to the limitation that the exemption shall serve some public purpose. The right to exempt property from taxation is to be exercised on reasons of state policy and presumptively such exemptions must contribute to the general public benefit.

The theory upon which the grant of an exemption must rest if its constitutionality is to be upheld is that it will benefit the body of the people and not upon any idea of lessening the burdens of the individual owners of property. 51 Am. Jur. Taxation, sec. 504; Boss *v.* Polk County, 236 Iowa, 384, 19 N. W. 2d 225; 61 C. J. Taxation, sec. 61.

II. Since a tax exemption statute is an exercise of the power to tax, the constitutional provisions with respect to tax laws are applicable. Art. III, sec. 30 of the Iowa constitution provides that the legislature shall not pass local or special laws "for the assessment or collection of taxes."

Art. I, Sec. 6, provides that "all laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or

BLEED THROUGH—POOR COPY

immunities which, upon the same terms shall not equally belong to all citizens." The last constitutional provision, when applied to tax legislation, means, in its first part, that laws that impose taxes must operate uniformly. In its second part, the general assembly is prohibited from granting tax exemptions (privileges or immunities) to any citizen, or class of citizens, unless the law makes the tax exemption applicable upon the same terms to all citizens.

In 16 C. J. S. Constitutional law, sec. 465 d, the rule is stated:

"Where, however, an exemption from taxation is not for a public purpose, it is peculiarly within a constitutional provision forbidding the grant of special privileges or immunities."

In Nathan *v.* Spokane County, et al, 35 Wash. 26, 76 P. 521, 524, where the court had before it the constitutionality of an act that allowed a tax deduction to an itinerant taxpayer, paying a second year's tax on the same property, it was held under a constitutional provision much like ours:

"Coming now to the consideration of the constitutionality of the proviso contained in the above statute, we think that the Legislature was without power or authority to enact any law providing that, after the payment of such taxes, the person paying them should be allowed certain deductions from the next regular assessment of such property. Article I, sec. 12 of the state Constitution, provides: 'No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.' "

See also City of Winchester *v.* Winchester Waterworks Co., 149 Ky. 177, 148 S.W. 1 and Purcell *v.* City of Lexington, 186 Ky., 381, 216 S.W. 599.

Actually our problem under the two constitutional provisions is narrowed to two inquiries that are closely related. (1) Is the purpose of the tax exemption statute a public purpose? (2) Is the classification reasonable and designed to carry out that purpose? If the purpose of the tax exemption act be not public, it violates both constitutional provisions, for in granting a tax exemption to some citizens and not to others for a purpose that is not public, it raises up a

special class to receive the tax immunity grant, and the balance of the public who are excluded, who always bear the burden of all tax exemption, must bear an increased tax burden to accomplish this special non-public purpose. Presumably, all citizens paying a certain tax have an equal interest in any reduction of that tax, unless it be that the reduction of the tax, as to some, serves some interest, which benefits others excluded, as a part of the public. If the public interest or benefit be not found, then a grant of tax reduction or exemption has been made to some without extending it to others equally entitled to the tax reduction. The tax legislation is therefore special for it does not operate upon all having an equal interest in the reduction. The rule is stated in City of Jackson *v.* Mississippi Fire Ins. Co., 132 Miss. 415, 95 So. 845, as follows:

"The limitation on the Legislature's power under the uniformity and equality clause of this section of the Constitution to exempt property from taxation and thereby discriminate against property taxes or the owners thereof is the same as the limitation on its power to discriminate between persons and property under any other constitutional guaranty, state or federal, of the equal protection of the laws. Gray, Limitation of Taxing Power, 656. This limitation is that there must underlie the exercise of the power 'some principle of public policy that can support a presumption that the public interest will be subserved by the exemption granted' (1 Cooley on Taxation (3d Ed.) 343), and the classification of the property exempted 'must be based on some reasonable ground, and some real difference which bears a just and proper relation to the object sought to be accomplished.' Adams v. Standard Oil Co., 97 Miss. 879, 53 South, 692; * * *."

III. What is the purpose of this tax exemption law? We turn to appellees' brief and argument. There we are told this law was part of the report and recommendation of the School Code Commission created by Chapter 314, Laws of the 50th General Assembly, which commission in its written report to the Governor, under date of July 1, 1944, stated:

"Agricultural lands within municipal corporation boundaries are now exempt by law from taxation for municipal

BLEED THROUGH—POOR COPY

purposes of which they do not receive the benefit, but the commission has found that applying the same remedy to agricultural lands within independent and consolidated school districts by taxing them in accordance with benefits received, is not practicable because it would result in confiscatory taxes against the non-farm property in these districts.

"A solution was sought by the 48th General Assembly when it passed the agricultural land school tax credit law, placing a ceiling of 15 mills for general school fund purposes on the taxes that could be levied against agricultural land within independent districts only. This was held unconstitutional by the Supreme Court because it discriminated against agricultural lands which did not lie in independent districts.

"Seeking a remedy in the same direction, this commission has had a bill drawn, and included in its report, patterned after the acts of the 48th General Assembly but applying the 15 mill limitation to all agricultural lands in the state. The mechanics of this bill are similar to the homestead tax credit act, which has been in effect for seven years, and the commission frankly recognizes that as to its constitutionality, it stands or falls with the homestead tax credit act.

"This bill, which proposes that the state assume the burden of school support which is shifted to it because of the 15 mill ceiling on agricultural lands, is desirable only as a supplement to the other state support bills proposed by the commission. The failure of the passage of the other state support bills should preclude the consideration of this bill."

Appellees quote from Governor Hickenlooper's message to the 51st General Assembly where, in commenting upon the School Code Commission, he said:

"The Fiftieth General Assembly established a School Code Commission and it has filed its report as provided by law. Each of you has received a copy and copies have been widely distributed by various interested groups throughout the state. Of the thousand copies authorized to be printed by the resolution, enough have been preserved so that each of you may have at least one additional copy. The School Code Commission has done an extensive amount of work. It was

aided by the studies of the former school code commission and it contributed a tremendous amount of time as a group. The individual members together with those who worked with them performed a fine service. Their report is concise and clear and covers a great portion of the field. They have recommended some twenty bills for your consideration.

"No doubt their report, and some of their recommended legislation, will raise controversy. Nevertheless, it is a capable job and I recommend your thorough study of it and the enactment of such recommended legislation, as may, in your judgment, be constructive and progressive. Our children should have the best and most efficient educational advantages."

Chapter 192, Laws of the 51st General Assembly, the act under discussion, was introduced in the legislature as House File 127 and appellees state that there was appended to the bill as it was introduced the following explanation:

"In many of our school districts agricultural lands are taxed to an excessive degree for school purposes.

"The Code Commission proposes this bill as a remedy, that a ceiling of 15 mills be placed on taxation of agricultural lands, over 10 acres in extent, for general school fund purposes. In districts where the millage rate is over 15 mills, the state shall reimburse the local district the amount on farm lands in excess of 15 mills."

From the foregoing it will be seen that the purpose of this tax exemption law was to correct the "excessive degree" of taxation of agricultural lands for school purposes "in many of our school districts." It was to correct an evil or irregularity which the legislature said existed.

The evil of excessive degree of taxation of agricultural land in a school district which the legislature saw is shown by the record, and developed in appellees' argument as follows: (again quoting from appellees' brief and argument)

"It has long been recognized that agricultural lands bear an excessive burden of taxation for general school purposes in comparison with other real estate. It is shown by Defendants' Exhibit 'C' that the ratio of the taxable farm property to taxable non-farm property in 97 consolidated school districts ranges from .97 in Cotter District to 62.80

BLEED THROUGH—POOR COPY

in Sommers District per child between the ages of 5 and 20 years, inclusive.

"In other words, farm property in those districts listed in the exhibit, the farmers paid (in 1941) from .97 to 62.80 times as much school taxes per child as did the owners of other property. "Exhibit 'D' shows the same tabulation for 99 independent city or town school districts and shows that the ratio per child of taxable farm property to taxable non-farm property runs from 1.17 in Ridgeway District to 68.37 in Jewell District. In other words, in those districts the taxable farm property per child is from 1.17 to 68.37 times as great as the taxable non-farm property. While these are extremes, the average ratio of taxable farm property to taxable non-farm property per child runs from four to seven times greater.

"Exhibit 'B' shows the same ratios of taxable farm property to taxable non-farm property per child in the 99 counties of the State. This ratio ranges from 1.85 in Dubuque County to 8.97 in Mills County and shows the average ratio of taxable farm property to taxable non-farm property per child in all of the counties of the State as 2.98. In other words, the taxable farm property is 1.85 times the taxable non-farm property in Dubuque County and 8.97 in Mills County; and the average taxable farm property is 2.98 per child times the taxable non-farm property per child in the entire state.

• • • • • • •

"There is no question therefore, but that the taxable property per child, and consequently the school taxes paid, by agricultural lands is far greater per child than the taxable property, and consequently the school taxes paid per child in the non-farm areas, or in the cities and towns of the State. This demonstrates conclusively that agricultural lands do not receive the same benefits from the educational facilities supported as does other property."

We will take a typical school district such as Albion in Marshall County. The record shows that in 1941 there were 272 pupils in the district and $1,344,306.00 taxable value of property in the district. By pupil is meant a child between the ages of 5 and 20 years, inclusive. One hundred fifty-six

pupils are listed "in farm areas" and one hundred sixteen children are listed "in non-farm areas." Of the total taxable value of the property in the district, $1,229,328.00 is listed as "in farm areas" and $114,978.00 is listed as in "non-farm areas." By dividing the taxable value of the farm area property, or $1,229,328.00, by the number of pupils in the farm area, or 156, the figure, $7,880.00 is reached, and this is called "taxable property per child" in farm area. By dividing the taxable value of the non-farm area property, or $114,978.00, by the number of pupils in the non-farm area, or 116, the figure, $991.00 is reached, and this is called "taxable property per child" in non-farm area. The conclusion drawn is that the non-farm area bears a taxable value burden of $991.00 per non-farm area pupil and farm area property bears a taxable value burden of $7,880.00 per farm area pupil, or 7.95 times greater (measured in taxable value of property) than the non-farm area.

The act then assumes the right of the legislature to tax property in a certain area in a school district for school purposes, in the proportion that pupils dwelling in that area and the taxable value of the land in the area bear to the entire pupil population and the entire taxable value of the land in the school district. Or stated in another way, the purpose of the act is to equalize, at least in part, by tax exemption, the tax burden for schools to the benefit received. In no other way can we understand the argument of counsel for appellees or the statistical exhibits all referring to the ratio of taxable farm property to taxable non-farm property *"per child"*.

But a school tax is not laid upon property, or upon areas of property, in order merely to benefit the land by allowing pupils who live on the property or in the area to go to the schools erected and maintained by the school tax fund. It is laid for a public purpose.

Article IX of the Constitution of Iowa is devoted entirely to the "educational interests of the State." During Iowa's first 18 years of statehood the state's entire educational system was under a state board of education. The con-

BLEED THROUGH—POOR COPY

stitution of 1857 forbade any change in this system until the year 1863. After that date, by Sec. 15, Article IX, the legislature was given the "power to abolish or reorganize the Board of Education, and provide for the *educational interest of the state* in any other manner that to them shall seem best and proper." (Italics supplied.) It was under the above power that the 10th General Assembly in 1864 abolished the state board of education. We need not trace the subsequent legislation that continued the old school districts, first established by the old state board of education, as school corporations but we must assume that the entire school system, as it now exists in this state, comprising some five thousand school districts, was created and is now being supported and maintained to serve "the educational interest of the state."

The school tax is like that for the support of government. It is for the benefit of all the people. It is a tax for a public purpose. All enjoy the beneficial results of education and the better order and government arising therefrom, irrespective of the amounts respectively contributed by each to this most important object. The test of equality of school taxes is not the direct benefit of school attendance by pupils who occupy the land taxed. Were that true the childless man would be exempt from the support of schools, and the sane and well from the support of hospitals. There is no irregularity merely because the benefits arising from the school tax are enjoyed, by those who pay it, in different degrees or because some enjoy some particular benefit such as school attendance and others do not. Everyone in the state enjoys the higher social order that flows from the state's educational system. A general tax law such as a school tax law exacts contributions in return for general benefits of a government that establishes a school system. The duty to pay school taxes is founded upon participation in general benefits. It cannot be laid or measured by a taxpayer's participation in some special benefit. See 51 Am. Jur. Taxation, sec. 9; C. M. & St. P. Ry. Co. v. Phillips, 111 Iowa 377, 82 N. W. 787. In 61 C. J. Taxation, sec. 3, the rule is stated:

"Taxes levied for governmental purposes are not imposed on the basis of a special and particular benefit accruing to each citizen in proportion to the taxes paid."

The following summary of principles, taken from 1 Cooley, Taxation, 4th Ed. 213-215, is applicable in this case:

"Taxes proper, or general taxes, it has been said, 'proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all.' That this is the correct theory is beyond doubt, but nevertheless the contention has often been presented that property receiving no direct benefit from a tax for a particular purpose should not be taxed for such purpose. However, it is almost unanimously held that it is no defense to the collection of a tax for a special purpose that a person liable for the tax is not benefited by the expenditure of the proceeds of the tax or not as much benefited as others. For instance, every citizen is bound to pay his proportion of a school tax although he has no children, or is not a resident, and this also applies to corporations; of a police or fire tax, although he has no buildings or personal property; or of a road tax although he never used the road. In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no benefits. So property within the limits of a municipality is subject to local taxation although it derives little or no benefit from the municipal government."

From the foregoing it will be seen that there was no legal inequality between taxes paid and benefits received by the owners of agricultural land in the school district.

BLEED THROUGH—POOR COPY

By figuring the tax burden on the land taxed for school purposes for each pupil on the land that is taxed, the legislature conceives an inequality exists, if, by such figuring, the tax exaction figured for each pupil on the land is higher than the tax exaction figured for each pupil on other land. Such figuring starts with an erroneous base. Carried to its logical conclusion it would mean a complete school tax exemption should be given to land on which there are no children. The entire argument for the existence of an inequality is grounded upon an assumption that school tax against property should be measured by pupils on the property; that there is, or should be, a definite exchange of equivalents between contribution for, and distribution of, general taxes; and that if there be a difference in benefits received or enjoyed, an inequality in the tax exaction is present. While there may be fewer families, and fewer pupils in the rural area, than there are in the remaining areas in a school district, this distinction furnishes no ground for lowering the rate in the rural area. If the number of children that a single taxpayer has bears no relation to the amount of tax he has to pay, it is difficult to see how it can be successfully argued that the number of children a group of taxpayers have does bear a relation to the amount of tax they all have to pay. We hold the tax exemption here was not for a public purpose. Since this is the first requisite of a tax exemption statute it is plainly unconstitutional under both constitutional provisions.

IV. Perhaps it would be unnecessary to pass to the second requisite of a tax exemption statute, or the classification. As previously stated, the classification would be illegal if the purpose of the entire tax exemption law was not a public purpose. The legislature is in the first instance the judge of the reasonableness of the classification for the exemption and it should not be disturbed by the courts unless it can clearly be seen that there is no fair reason why the law should not be extended to others equally situated with respect to the purpose to be accomplished.

In Keefner v. Porter, 228 Iowa 844, 293 N. W. 501, we said by way of quotation from Essex County Park Commission v. West Orange, 77 N. J. Law 575, 73 A. 511:

"'That property of a class may be exempted from taxation is not to be denied, provided always that the classification is a proper one; but it is well settled that all members of a class shall be included in the taxing act whether for purpose of imposition of or exemption from taxation. * * * If a law excludes from its operation a single member of a class which it otherwise would affect, it will be invalid. * * *'"

We have seen that this law is enacted for the benefit of a class of owners who it is argued pay school taxes, by reason of their ownership of property in a certain area, in excess of the special benefits that accrue to the occupiers of the real estate in that area. If it is right to grant an exemption to this class of property owners, then all those who are similarly situated should be drawn into the class.

Finally, the legislature seeks to correct this inequality by the grant of a class exemption to agricultural lands. If we should admit the existence of a legal inequality then it is difficult to see how the classification made would be proper. Appellees' argument in support of the classification is that the statistical evidence demonstrates conclusively "that agricultural lands do not receive the same benefits from educational facilities supported as does other property." Surely a case could be made for business property. It does not, in the language of appellees' counsel, receive "the same benefits from educational facilities supported as does other property," if by "same benefits" is meant pupil occupancy of the property taxed. We need not pursue the argument further to show others similarly situated who are excluded by the exemption act. It is enough to say that if it be thought inequality exists because certain land does not receive the "same benefits" as other land and the "same benefits" is construed to mean pupil occupancy of the land, then no classification for tax exemption to correct the inequality would be proper unless it brought into the class of those to receive the grant, all

BLEED THROUGH—POOR COPY

lands that do not receive the same benefit, construed to mean the right of school attendance by the occupiers of the land taxed. The area classification of agricultural land to receive the grant of exemption, and other land to be excluded, is purely arbitrary.

For other cases on the subject of classification for purposes of taxation of agricultural lands and other real property, see note, 111 A. L. R. 1486.

V. Appellees argue that this court has already recognized the classification of agricultural land and other land for the purposes of taxation and cite the case of Leicht v. City of Burlington, 73 Iowa 29, 34 N. W. 494. There we upheld the constitutionality of Sec. 4, Chap. 47, Acts of the 16th General Assembly, (now sec. 404.4, Code, 1946) exempting from municipal taxation, lots of more than 10 acres, used for agricultural purposes, included within territory annexed to a city or town under other provisions of the above chapter. The plaintiffs in the case were owners of lots in Burlington containing less than 10 acres but used for agricultural purposes and they contended the 10 acre distinction in the act was arbitrary and the act was not uniform. We decided no arbitrary distinction or classification was created by the 10 acre limitation. It does not appear that the basic question of the right to classify for general taxation placing agricultural property in one class and non-agricultural property in another was considered or decided. That question of the 10 acre limitation is present in this case but we do not reach it because of our decision with respect to the right to exempt agricultural land in the first instance from the burden of a general tax. Granted that right we would be inclined to agree with counsel for appellees as to the legislature's right to make the limitation of 10 acres. Leicht v. Burlington, supra, supports such a right of subclassification within the general classification of agricultural lands.

The history of such an exemption as is contained in the statute considered in Leicht v. Burlington is necessary for a proper study of the force of this decision. Chapter 47, Acts of the 16th General Assembly which took

effect in 1876, was the first law with respect to taxation of agricultural land inside cities and towns. Between 1859 and 1874, some ten opinions of this court considered the question of the taxation of agricultural land that came within a city or town limits when those limits were extended. See Morford v. Unger, 8 Iowa 82; Butler v. Muscatine, 11 Iowa 433; Langworthy v. City of Dubuque, 13 Iowa 86; Langworthy v. City of Dubuque, 16 Iowa 271; Fulton v. City of Davenport, 17 Iowa 405; Deed v. Sanborn, 26 Iowa 419; O'Hare v. City of Dubuque, 22 Iowa 144; Hershey v. City of Muscatine, 22 Iowa 184; Deiman v. City of Fort Madison, 30 Iowa 542; Durant v. Kauffman, 34 Iowa 194. The above cases established and applied the following rule which is taken from Langworthy v. City of Dubuque, 16 Iowa 271:

"While the enlargement of the boundaries of a town, whereby the property of individuals is brought within the corporate limits without their consent, and subjected to taxation for town purposes, may not be an infringement of the constitution by taking private property for public use; yet, that it may become so, by an unreasonable extension of the town limits, in taking in lands and territory not at all needed for buildings and population, and taxing the same for the benefit of that portion of the corporate domain which may be peopled and occupied. In all such cases, while the courts will not interfere with the boundary limits, for the reason that mere extension, without the municipal imposition of taxation, is not in itself detrimental; yet that they will control and limit the taxing power, whenever practicable, to that point or line where it ceases to operate beneficially to the proprietor in a municipal point of view."

The court in the above case stated that the above proposition was no longer "open to controversy" in this state.

Thus it will be seen that long before the law, held constitutional in Leicht v. Burlington, supra, this court had recognized constitutional rights of citizens against the taking of private property for a public use would or could be infringed upon by the exercise, by a city, of its right to extend its city limits and draw in surrounding farm territory. We have said much in the course of this opinion of the legisla-

BLEED THROUGH—POOR COPY

ture's right to measure special benefits to general tax burdens, but this is also true: There is no power to tax when there is no benefit. 61 C. J. Taxation, sec. 2. The benefit may be the general advantages and protection afforded by the government but unless we find some benefit the taxation becomes an unconstitutional taking of private property for public use.

We will not review the facts in the cases last cited above. In some of them the farm land in the annexed portion was a mile or two from the old city limits and the built-up portion of the city. The character of the farm land did not change by the extension of city limits and obviously would not change for many years to come. In those cases where the court found as a finding of fact that no benefit was derived by including the land in the city limits such as no streets, and consequently no police or fire protection, the court held the property should not be taxed for municipal purposes until the municipality was prepared to extend to the annexed area some municipal benefits. In these holdings the court was giving expression to a basic theory of all taxation. In other words, the land in the extended area did not *immediately* change its characteristics by the drawing of a surveyor's line marking the new limits of the municipality. The municipality did not *immediately* extend the benefits, advantages, and protection of municipal government to the new land in the annexed territory. There was no law on the subject and the decisions all held it was a question of fact to be decided from the evidence in each case as to whether the agricultural land taken into the municipal limits actually received some benefit from a tax laid on the land in a municipality. In some of the cases the court held the tax was properly laid and in other the tax should not be imposed. It was a proper situation for a general law which would govern the taxation of annexed territory, before such territory began to receive the ordinary benefits municipal land enjoys. But it is extremely significant that the cases before the statute, and the statute itself, recognize that as soon as the land takes on some urban characteristics by the extension of streets and alleys to the extended portion, the exemption as to municipal taxes ends.

Neither the decision in Leicht v. Burlington, supra, nor the cases decided prior to the statute there considered, are authority for the appellees here. All of the land in the State of Iowa is in some school district. All of the land in the state of Iowa is burdened with a school tax to further the state's educational system unless an exemption, designed to carry out a public purpose, exists as to some of the land. The facilities of the state's system is available to all citizens of the state now. We have no problem of the extension of a district without any consequent advantages to the land in the extended area. The statute in Leicht v. Burlington, supra, recognized the exemption expired when municipal advantages reached the area without question of the degree of advantages enjoyed. That moment is here as to all the land now within the school district.

In the case of boundary extension, where taxpayers are drawn into a new taxing district, problems of taxation of property in the new area frequently arise at the outset. This is so in the case of school districts and the legislation was recognized that when boundary lines of school districts are changed, there may be an unequal levy for a time as to the property in the new district to effect an equalization. Section 274.21, Code, 1946.

VI. We need not review or comment upon the cases cited by appellees. They do not deal with legislative power to exempt from general taxes under constitutional provisions similar to ours. There is one exception to the above statement. In Keefner v. Porter, 228 Iowa 844, 293 N. W. 501, cited by appellees, we considered a similar law passed by the 48th General Assembly which granted a similar tax exemption to agricultural land in independent school districts. We held the law unconstitutional because agricultural land in consolidated districts was not included in the class benefited. The opinion does not consider or decide the legislative power to give a tax exemption from general tax burden based on the ratio of children living in an area of the school district to the taxable value of the land in the area. But we are told in argument this question was presented in the briefs. We must confess it was and perhaps it would have been better if we had gone into the question then

BLEED THROUGH—POOR COPY

instead of basing the conclusion of unconstitutionality upon the obvious defect in the classification. But in any event, our decision of unconstitutionality of a similar statute in that case, based upon improper classification, is no authority for the constitutionality of the statute in the present case.

VII. Because we hold the statute violative of Art. I, sec. 6 and Art. III, sec. 30 of the Iowa Constitution, we need not go into the question of whether the statute also violates other provisions of the state or federal constitutions. But appellees argue, and the trial court held, that in any event the statute herein considered would be constitutional under Art. III, sec. 31 of the Constitution of Iowa. That section provides as follows:

"No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly."

The argument of appellees is that this is an appropriation act and if it be considered as "for local or private purposes" then it is still constitutional because the record shows it was passed by a two-thirds vote of the members elected to each branch of the General Assembly. Little need be said in answer to the argument. The above provision is no grant of authority to the legislature to enact any kind of an appropriation act by a two-thirds majority. As having some bearing thereon, see Love v. Des Moines, 210 Iowa 90; 230 N. W. 373. The prior section, or section 30, which we have heretofore considered prohibits local or special laws for the collection of taxes for state purposes. The terms local, special, or private, when applied to the purpose of legislation are practically synonymous. Words & Phrases, Perm. Ed. Vol. 25, pages 542-544. This is a law for the collection of taxes for state purposes. It violates section 30, Art. III, and it is not rendered constitutional

because of the appropriation feature of the act. The burden of all tax exemptions is borne by taxpayers. Possibly the legislature might have a right to scatter the burden of a legitimate tax exemption in a school district more widely than the district taxpayers. We need not decide the point. It is certain, however, their diffusion of the burden caused by the exemption adds nothing to the validity of the exemption.

Lest it be thought that by our quotation from the School Code Commission's report, we subscribe to the Commission's comments as to the homestead tax credit law, we will state that the constitutionality of that law has not been assailed in this court. Fundamental differences that are readily apparent exist as to the two laws. The same can be said with reference to the Soldier's Tax Exemption law touched on in appellees' argument.

VIII. The attorney general argues that the law is constitutional because the appropriation is for the benefit of agriculture, Iowa's basic industry, and the trial court, in his opinion stated: "that the act in question appropriates public money for the sole purpose of aiding agriculture, and is, therefore, an appropriation for public purpose."

We have heretofore pointed out that the burden of all tax exemptions falls upon the taxpayers. An appropriation to pay a tax exemption, granted for a public purpose, would certainly be an appropriation of public funds for a public purpose. But it is just as true that an appropriation to pay an invalid tax exemption—one that is not granted for a public purpose—would be an appropriation which would not be for a public purpose. In other words, the appropriation feature of the act has not the slightest significance on the question of the constitutionality of the act here involved. Indeed it has often been stated that all tax exemptions are actually appropriations of public funds. In legal concept all property owners bear the same duty to support the government by taxation. To the extent that one property owner is exempted from that duty there is an appropriation of tax revenue to that property owner. We have said that a tax exemption to be valid must be for a public purpose. The legislature, having

BLEED THROUGH—POOR COPY

the power to appropriate funds for a public purpose, has of course power to appropriate funds to pay all or a part of the burden of a valid tax exemption. For instance, the legislature has appropriated municipal, county, and state funds to pay the school taxes on property that is exempt from taxation because owned by a municipality, a county, the state, or the federal government and located in a school district. Chapter 284, Code 1946. Such appropriation acts lighten the burden of the property owners in the school district but they are valid because the tax exemptions of property owned by a municipality, county, the state, or the federal government, are valid. In other words, an appropriation act to pay the burden of a tax exemption adds nothing to the validity of the law. It is a mere legislative designation of the public fund that is to bear the burden of the exemption. If there is no appropriation act accompanying a tax exemption law, the payers of the particular tax, such as the school tax, bear the burden of the exemption and to this extent there is an automatic appropriation of school tax funds in favor of the exemptee. But whether there be an appropriation act, accompanying the tax exemption law or not, the constitutionality of the act will depend upon whether the exemption be for a public purpose. If it is not, then no appropriation act, to pay the exemption, will render the act constitutional. We have held the exemption here granted is not for a public purpose. It necessarily follows that the legislative designation of the fund that was to pay the exemption, or the appropriation from state funds of $500,000.00 to pay the tax credits allowed by the act, would not be for a public purpose. There is no merit in the attorney general's argument that the constitutionality of the act is saved by the appropriation feature of the act and his argument that this act "makes an appropriation for the benefit of agriculture as an industry." Such cases as Blume v. Crawford County, 217 Iowa 545, 250 N. W. 733, where an appropriation of county funds to a County Farm Bureau was upheld and Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, where an appropriation to pay a portion of the salary of a county agent connected with the agricultural college, and all the other cases cited by the attorney gen-

eral, discussing appropriations made for a public purpose, are not in point. The appropriation here made, as stated in the title to the act, is an appropriation to pay the "tax credits" allowed by the act. It is in no sense an appropriation "made for the benefit of agriculture as an industry" as the attorney general argues. The tax credits, or the exemptions, given to owners of agriculture lands in a school district, which the appropriation is designed to pay, are not, under the record, for the benefit of agriculture as an industry. The credits are given, under the undisputed record and under the attorney general's argument, because the legislature felt there was a relationship between property taxed for school purposes and the number of pupils living on the property. We have held the number of children living on the property taxed for school purposes bears no relation to the duty to pay school tax and that the school tax exemption in favor of the property with fewer children in proportion to the value of property is not for a public purpose. The exemption, therefore, was for a private purpose and it necessarily follows that the appropriation of state funds to pay the exemption would be for a private purpose.

IX. While the attorney general does not seem to argue that the exemption as distinguished from the appropriation, is for the purpose of aiding agriculture, or indeed for any other purpose than that of equalizing in part the school tax burden with respect to benefits, as previously analyzed, still we recognize that it is the duty of this court in passing upon the constitutionality of a law to consider other grounds upon which the constitutionality of the act might be sustained.

The trial court in his opinion stated that the public was benefited by this tax credit for agricultural lands because farming is Iowa's basic industry. It may be the trial court had in mind Article IX 2nd, sec. 3, Iowa Constitution wherein it is provided: "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, *and agricultural improvement*". (Italics supplied) We call attention to the fact that this article of the Constitution, as indicated by its

BLEED THROUGH—POOR COPY

title, deals exclusively with Education, School Lands, and School Funds and the specific section, or section 3, is entitled: "Perpetual support fund." It would seem that the encouragement to promote agricultural improvement found in this constitutional provision would be encouragement to devote part of the perpetual school fund for agricultural improvement. But in any event we recognize the general power of the legislature to pass a law in aid of agriculture. In Blume v. Crawford County, 217 Iowa 545, 250 N. W. 733, where we upheld the constitutionality of a state making appropriations of county funds to farm bureaus, we stated:

"So in the case at bar the legislature in chapter 138 of the Code has declared the public policy of this state, with reference to extending aid to agriculture, the great basic industry of this state. There is no inhibition against this power in any of the provisions of the Constitution, and it is not repugnant to any constitutional provision. The legislature, under the powers vested in it by the state, has extended aid to farm associations for the purpose of aiding agriculture, horticulture, animal industry, and similar kindred occupations * * * The defendant farm bureau was not organized for private purposes. On the contrary, it is an enterprise engaged in furthering the welfare and benefit of agriculture, the great basic industry of this state, and for the benefit of the public generally. The act in question is a valid exercise of the state's governmental functions, * * *."

It will be noted in the constitutional provision the legislature is to encourage agriculture by "all suitable means" and in the Blume case we pointed out that the statute there considered was in furtherance of the public policy of the state and it was "not repugnant to any constitutional provision." It could hardly be argued that a discriminatory tax statute, in violation of other constitutional provisions would be upheld as being in aid of agriculture because the discrimination was in favor of agricultural lands. But, waiving the question, for the purpose of discussion, let us see if this act can fairly be said to be in aid of agriculture or for agricultural improvement.

Agriculture is the art or science of cultivating the ground, including the planting of seed, harvesting of crops, and the raising, feeding and management of livestock and poultry. Words & Phrases, Perm. Ed. Vol. 3, p. 46. When we speak of a law in aid or improvement of agriculture we mean a law for the betterment of this science or art of cultivation and livestock raising; a law that helps and benefits this so-called basic industry, as an industry.

Just how a partial school tax exemption to some but not all of the owners of agricultural land in this state will aid or better the science or industry of agriculture is beyond our comprehension and as stated we are not aided by any argument by the attorney general. According to the evidence the law would have effect in less than half of the five thousand school districts in the state. How is the agricultural industry, as an industry, improved by a law that grants public funds in the form of a tax exemption in aid of some owners of agricultural lands? A grant of partial relief from a tax burden to some owners of agricultural land is certainly not the kind of aid to agriculture that is part of the public policy of this state, nor can it be said to be in furtherance of agricultural improvement, if it be thought the constitutional section is applicable. What is meant is such a law as was before us in the Blume case, involving an appropriation to a non-profit association engaged in the benefit of agriculture, or the law before us in Fevold v. Board of Supervisors, 202 Iowa 1019, 210 N. W. 139, involving the suppression of bovine tuberculosis, or the law before us in Gray v. Thorne, 196 Iowa 532, 194 N. W. 961, involving the eradication of barberry plants. It is not enough that some incidental public benefit might result, when the direct and primary purpose is to aid individuals in the enterprises they have engaged in for private gain. In Lancaster v. Clayton, 9 Ky. 611, 5 S. W. 864, it is stated:

"The burden of taxation is justly a common one. Its object is to provide means for the protection and benefit of all; and this being so, all should help to bear it. An exemption to one person is but additional burden to another * * * It (the taxing power) cannot be used * * * to take from one person his property and give it to another one more

BLEED THROUGH—POOR COPY

favored, and this too, although it may incidentally benefit the community • • • Whatever directly promotes individual interest, although it may also tend incidentally to the public welfare, is essentially a private, and not a public, object; and it is the essential character of the object of the expenditure, and not the degree of the incidental public benefit, which must determine the validity of the tax."

See, also, Cooley on Taxation (4th Ed.) sec. 179, where it is stated:

"Indirect and incidental benefits which may result to the public do not constitute a public purpose where the direct object is private."

Of course agriculture is Iowa's basic industry but the individuals engaged in that industry are engaged in private business for private profit. A direct, specific, appropriation of public funds (and a tax exemption is an appropriation of public funds) to individuals engaged in the private business of farming, is for the private purpose of aiding them in their business. It cannot be called a public purpose merely because the farming business is a part of the agricultural industry. The manifest object of such state aid is the individual private business of the recipient.

Moreover, it is doubtful if there is any net incidental benefit to the public from such a law. In our modern integrated economy, the welfare of each person depends almost entirely on the use made of the productive capacity of all. In an agricultural state like Iowa, the welfare of all the people is so firmly based upon the productive capacity of agriculture, that the legislature has wisely said it is our basic industry, and its advancement is a proper objective of state aid to the end that the welfare of the general public be furthered. But the aid to agriculture that is a part of the public policy of this state means something that is designed to aid the productive capacity of those engaged in the industry. It does not mean mere income betterment by a direct grant of public funds to owners of agricultural lands, in the form of a tax exemption from the payment of a general tax. As bearing thereon see Deering & Co. v. Peterson, 75 Minn. 118, 77 N. W. 568, holding appropriation for seed-grain loans to farmers unconstitutional, and in Re Opinion of the Judges, 59 S. Dak. 469, 240 N. W. 600, hold-

ing appropriation to furnish feed to livestock raisers unconstitutional.

The trial court held that, "in so far as the act extends a credit to agricultural lands, * * * it indirectly benefits non-agricultural lands", because "farming is the basic industry of the state * * * upon which the general welfare and prosperity of the inhabitants depends." Such a conclusion is based upon circuitous reasoning. A short answer is that any incidental benefit accruing to the general public by reason of income betterment of agricultural land owners, is entirely offset by the increased tax burden the public must pay in order to give the agricultural land owners the tax exemption that results in their increased income.

Without further pursuing the subject, we hold the law cannot be sustained as being in aid of agriculture within the public policy of this state.

X. The attorney general argues that the law is actually an appropriation "in aid of public education." A simple reading of the law shows there is no appropriation in aid of education. The school districts receive no increase in funds by reason of the appropriation. They will receive no decrease in funds by our holding that the law is unconstitutional.

For the reasons stated herein the cause is reversed and remanded for a decree declaring Chapter 426, Code, 1946, unconstitutional.—Reversed and remanded.

Bliss, Oliver, Mantz and Hays, JJ., concur.
Garfield, Hale and Smith, JJ., dissent.

LAURA DICKINSON

v.

C. FRED PORTER, ET AL.

142-47072

GARFIELD, J. (Dissenting):

I respectfully dissent.

I. All the grounds upon which plaintiff attacks this statute were urged in Keefner v. Porter, 228 Iowa 844, 293 N. W. 501, in an attack upon the earlier statute. Plaintiff's

BLEED THROUGH—POOR COPY

petition, briefs and arguments are largely patterned after and copied from parts of plaintiff's petition, briefs and arguments in the Keefner case. The single basis of attack which was sustained in the Keefner opinion, that the law "discriminates against those owning agricultural lands not located in an independent school district," was eliminated by the legislature in the enactment of the present statute and is not now advanced. If the contentions this plaintiff urges are sound now, they were sound when the Keefner case was decided. It would seem this court was not then convinced of the soundness of such grounds.

We should hesitate to declare the present act void since the legislature, after the Keefner opinion was filed, reasserted its power to enact the present law with the elimination of the objectionable feature pointed out in that opinion. See Stewart v. Board of Supervisors, 30 Iowa 9, 1 Am. Rep. 238, a leading authority which upholds a law authorizing a tax in aid of railroads, frequently cited throughout the subsequent history of this and other courts.

II. The presumption in favor of constitutionality is especially strong where the legislature has exercised the power to classify persons or property for purposes of taxation. Its determination of what is a public purpose is little short of conclusive upon the courts. It exercises the largest measure of discretion in these matters. Some of the many authorities which sustain these propositions are cited in Divisions VI and VII hereof. There is no dissent from them.

We have pointed out repeatedly the legislature has power to enact any kind of legislation it sees fit provided it is not clearly and plainly prohibited by some provision of the state or federal constitutions. Carlton v. Grimes, 237 Iowa 912, 943, 23 N. W. 2d 883, 899; Carroll v. City of Cedar Falls, 221 Iowa 277, 280, 261 N. W. 652, 654; Loftus v. Dept. of Agriculture, 211 Iowa 566, 569, 570, 232 N. W. 412. See also 16 C. J. S., Constl. Law, section 70.

It is not our province to pass upon the policy, wisdom or justice of a statute nor the expendiency of its enactment. The remedy for unwise or oppressive legislation within constitutional bounds is not to be found in the courts but by appeal to the justice and patriotism of the legislators. Mc-

Guire v. Railway, 131 Iowa 340, 349, 108 N. W. 902, 33 L. R. A. n. s. 706, and citations. See also Merchants Supply Co. v. Iowa Sec. Comm., 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579; 11 Am. Jur., Constl. Law, section 138.

The duty does not rest upon the attorney general to convince us the act in question is constitutional. Plaintiff-appellant has the burden to satisfy us beyond a reasonable doubt (Miller v. Schuster, 227 Iowa 1005, 1015, 1020, 289 N. W. 702, and citations; Loftus v. Dept. of Agriculture, supra, 211 Iowa 566, 570, 232 N. W. 412 and citations) the act plainly violates the constitutional provisions invoked and *to point out the manner or respect in which it violates them.* In other words, she must designate the grounds on which the particular constitutional provisions have been infringed—she "must point out and state with particularity the details of supposed invalidity." 11 Am. Jur., Constl. Law, section 132. To the same effect are 16 C. J. S., Constl. Law, section 96a; Peverill v. Board of Supervisors, 201 Iowa 1050, 1056, 205 N. W. 543.

Plaintiff has the burden to *negative every conceivable basis which might support this statute.* Madden v. Kentucky, 309 U. S. 83, 88, 60 S. Ct. 406, 84 L. Ed. 590, 593, 125 A. L. R. 1383, 1386, cited with approval in Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 16 N. W. 2d 572, 578. To substantially the same effect are Carmichael v. Southern Coal & Coke Co. (Cardozo, J.), 301 U. S. 495, 57 Sup. Ct. 868, 81 L. Ed. 1245, 109 A. L. R. 1327, 1333, 1336, 1337, also cited by us with approval in the Merchants Supply Co. case; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78, 79, 31 S. Ct. 337, 340, 55 L. Ed. 369, 377, Ann. Cas., 1912C 160, from which we quote with approval in Berg v. Berg, 221 Iowa 326, 332, 264 N. W. 821. See also Tolerton & W. Co. v. Board Asst. & Rev., 222 Iowa 908, 913, 914, 270 N. W. 427, in which we unanimously upheld the Iowa Chain Store Tax Act, chapter 424, Code, 1946. Madden v. Kentucky, supra, upholds a state statute which places a tax of 50 cents per $100 on bank deposits outside the state and 10 cents per $100 on deposits within the state.

Reference has been made to the foregoing principles because it is plain the majority has ignored one or more of them.

BLEED THROUGH—POOR COPY

III. The majority holds the act violates Article III, section 30, and Article I, section 6, Iowa Constitution, on the ground it is a plain tax exemption statute not for a public purpose. It is apparent this is the principal ground on which the majority invalidates the act. *Appellant has never attacked this statute by pleading or in any other manner, either in the lower court or here, as a violation of these or other constitutional provisions on the ground it is a tax exemption law not for a public purpose.* On the contrary appellant strenuously argues it is not a tax exemption act. She says in her reply argument: "We submit the Act is not a tax exemption statute, nor a tax limitation statute. • • •

"Appellees jumped off on the subject of the right of the Legislature to grant tax exemptions, and seek to have the court consider the statute in question as an exemption statute. The short answer to this phase of Appellees' contention is that the act does not, either expressly or impliedly, exempt property from taxation. • • • (This sentence appears in heavy type).

"The question of the right of the state to exempt from taxation, and the limitations in respect thereto, are not proper subjects of this inquiry, as that question is not involved in a consideration of this statute."

It is true appellant pleaded in the court below and maintains here the act violates Article III, section 30, and Article I, section 6, but she specifies the ground of such violation as the unreasonable and arbitrary classification, in different respects, of the agricultural land to which the law applies. I concede the question of the reasonableness of the classification is properly raised but disagree with the majority's Division IV on that issue.

The majority has no right to reach out and supply the principal ground on which it holds this act void. In doing so it has assumed the role of advocate. This is a plain violation of the fundamental rule, repeatedly and universally recognized, that a reversal will not be ordered on a ground not properly raised in the court below, much less upon one not advanced in this court. Peculiarly applicable is Quong Wing v. Kirkendall (Holmes, J.), 223 U. S. 59, 63, 64, 32 S. Ct. 192, 193, 56 L. Ed. 350, 352.

IV. I concede, if the question were properly raised, that a tax law or a tax exemption law must, in a sense, be enacted for a public purpose. By this is meant no more than that such a statute must be enacted for the "public good" or the "public welfare," that "some principle of public policy" must underlie its enactment, it must be "clothed with a public interest."

A purpose is a public one which "promotes the general welfare and prosperity of the people who are taxed to sustain it." Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, 411. The purpose "may be only to remove 'obstacles to a greater public welfare'." Heisler v. Thomas Colliery Co., 260 U. S. 245, 256, 43 S. Ct. 83, 67 L. Ed. 237, 241. See also 51 Am. Jur., Taxation, section 504, cited by the majority. Further authorities on the question what is a public purpose are cited in Division VI hereof.

Whether, as the majority holds, a tax exemption statute not for a public purpose would violate the equality and uniformity provisions of our state constitution (Art. III, sec. 30, and Art. I, sec. 6) or would be a violation of due process is a question on which there is not complete agreement. That question need not be considered. Due process would doubtless be violated by the enactment of such a statute for a purely private purpose. See 61 C. J., Taxation, section 100; Carmichael v. Southern Coal and Coke Co., supra, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A. L. R. 1327, 1336, and citations.

V. In my opinion the majority's attack upon this statute as a tax exemption measure not for a public purpose is not sustainable. It is obvious the majority's holding rests largely upon what it has concluded, *from the extrinsic matters* set out in its Division III, was the purpose of the lawmakers. Extended reference is made to a report of the school code commission to the governor, to the governor's message to the legislature, to a statement appended to the bill when it was introduced, and to a portion of one division of appellees' brief and argument. The division from which the majority quotes contains less than 12 pages and advances only one of different arguments by appellees in defense of this enactment. Appellees' whole brief consists of five divisions and 147 pages.

BLEED THROUGH—POOR COPY

It is true, of course, the history of legislation may be considered in construing an ambiguous statute. Independent Dst. v. Iowa Emp. Sec. Comm., 237 Iowa 1301, 1308, 25 N. W. 2d 491, 496, and citations. It is not claimed this act is ambiguous. And there is ample authority that the majority has no right to resort to these extrinsic matters as a foundation for invalidating this statute. Nor is this court concluded by one of the arguments of the attorney general (nor by his entire argument for that matter) in defense of the measure.

Paradoxically, appellant asserts in her reply brief and argument, I believe correctly, these extrinsic matters to which the majority attaches controlling importance, are entitled to no weight, or in any event are not binding on the court and that the validity of the statute should be determined from the act itself. She says:

"There is nothing ambiguous about the Act in question and its validity can and should be determined from the Act itself. Assuming without admitting that the Act is ambiguous and that the history of the legislation and the policy of the legislature may be considered by the court * * * it is not binding on the courts."

Even if appellant's admonition is disregarded and the extrinsic matters referred to by the majority are considered, they give little if any indication of the purpose of the legislators. Certainly they are not conclusive. The lawmakers are not concluded by the report of a commission to the governor, by the governor's message, nor by a statement appended to the bill when introduced which was no part of the final enactment. And surely the lawmakers are not concluded by some statistics introduced in evidence as part of a stipulation of the parties upon the hearing below, which were prepared by a professor at the state college.

The majority calls attention to nothing in the act itself which indicates the purpose the opinion imputes to the legislature. No such purpose is disclosed by the brief title to the act. It may be observed this act omits the rather long preamble and list of "Whereases" found in the earlier act, chapter 109, 48th G. A., invalidated in Keefner v. Porter, supra, 228 Iowa 844, 293 N. W. 501.

Since the majority has seen fit to quote from Governor Hickenlooper's message to the legislature it may be well to set out a part thereof the majority has omitted, immediately following the excerpt found in its opinion and to which appellees also call attention in argument:

"We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities. Our social and cultural stability and progress demand that we maintain a fair level of farm prosperity and that individual ownership of homes and business be encouraged."

Even assuming, as the majority has concluded, "the purpose of the act is to equalize, at least in part, by tax exemption, the tax burden for schools to the benefit received," it by no means follows the act is void. It is true it is no defense to the collection of a tax for a special purpose that the person taxed is not specially benefited by the expenditure of the proceeds of the tax nor as much benefited as others. Accordingly taxes *need not* be laid or measured by a taxpayer's participation in some special benefit. The authorities cited in the majority's Division III go only to this extent.

No authority cited sustains the majority holding that the legislature is powerless to consider the question of actual benefits received in classifying persons or property for taxation purposes. To undertake to do what the constitution does not require is not beyond the power of the legislature. As the majority concedes, there is no power to tax where there is no benefit. That legislatures may properly consider, in classifying persons or property for taxation, actual benefits is directly held in Great Northern R. Co. v. Whitfield, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, which upholds a similar act; Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, 108, and citations; Apartment Owners' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 445.

Assuming the majority has properly resorted to extrinsic evidence to find the purpose of the legislature, has correctly

BLEED THROUGH—POOR COPY

discerned such purpose and that it is impossible of accomplishment within constitutional bounds, the act should not be held invalid *unless it is not sustainable on any other theory.* This court is not concluded by what may have been the purpose of the lawmakers. Jury verdicts will not be set aside because inadequate reasons may have prompted the jurors to return them. Judgments of lower courts are permitted to stand even though they were reached upon fallacious reasoning. Acts of a coordinate branch of state government should not be set aside by the courts merely because of an erroneous purpose of the legislature. The majority's disregard of this fundamental principle underlies its opinion.

Now for some of the authorities which support the views expressed in this Division V.

Squarely in point on this branch of the case is Schmitt v. Nord, — S. D. —, 27 N. W. 2d 910, 915, in which the trial court had held invalid a tax of 10 cents a pound on butter substitute. In reversing the lower court and in holding it had no right to consider such extraneous matters as the majority has considered here, the South Dakota court says:

"In so concluding the trial court considered a resolution of a tax conference, and a message of the Governor which were before the legislature at the time the act was adopted, a so-called admission in the answer of defendants that the 'act was adopted for the purpose of equalizing, to some extent, the tax burden as between the dairy farmer and the oleomargarine and butter substitute industry' together with the burdensome nature of the rate. In other words, the trial court considered facts for the purpose of finding whether the legislature had exerted a lawful power under the influence of an improper motive. This was beyond its competence. Such conduct on the part of the legislature would amount to an abuse of one of its constitutional powers. Power abused does not cease to be power. Control of the exercise of legislative power is not a function of the courts. It is the absence of power to legislate which a court may declare in order to enforce the rights of litigants under the constitutions of the nation and state."

In A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (Sutherland, J.), in upholding a state tax of 15 cents a pound on butter substitutes, it is stated:

"Collateral purposes or motives of a legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry. • • •

"The statute here under review • • • must be construed, and the intent and meaning of the legislature ascertained, from the language of the act, • • •.

"From the beginning of our government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment."

"Since an act depends primarily on its objective result and effect for its validity, the fact that the legislature has mistaken ideas concerning it • • • has little bearing upon its constitutionality. Thus, a mistake of the legislature as to the constitutional basis for an act does not prevent the act from being a valid one if it is constitutional for other reasons." 11 Am. Jur., Constl. Law, section 101.

"One of the doctrines definitely established in the law is that if a statute appears on its face to be constitutional and valid, the court cannot inquire into the motives of the legislature. • • •

"The rule is equally settled that ordinarily the *courts are precluded from investigating beyond the statute itself the intention of those who enacted it.* If one of the aims of legislation is valid, it is not rendered invalid by the circumstance that the legislature had other purposes in view which, considered apart, it had no constitutional power to make effective. (Italics added.)

"• • • since the purpose of a statute should be determined from the natural and legal effect of the language employed, whether it is repugnant to the Constitution must therefore be determined from its natural effect when put into operation, and not from its proclaimed purpose." 11 Am. Jur., Constl. Law, section 141.

Recitals in a statute setting forth arguments or reasons for its enactment will not render it unconstitutional if it

BLEED THROUGH—POOR COPY

is otherwise valid. A statute is not rendered unconstitutional "by the fact that the legislature is mistaken as to the constitutional basis for the statute. • • •

"The controlling cause for the enactment of a statute does not in general affect its validity, • • •." 16 C. J. S., Constl. Law, section 71a, pages 149, 152, 153.

"Admissions, stipulations, or undenied allegations of the parties as to the unconstitutionality of the statute or as to the facts upon which the attack is based are not binding on the court in its determination." 16 C. J. S., Constl. Law, section 97.

As recently as in Merchants Supply Co. v. Iowa Sec. Comm., 235 Iowa 372, 383, 16 N. W. 2d 572, 579, we said, through Justice Hale: "It is not the function of the court to consider the propriety or justness of an occupation tax, or seek for the motives or criticize the public policy which prompted its imposition."

Still more recently, in Plank v. Grimes, — Iowa —, 28 N. W. 2d 34, 36, we observed, through the present chief justice, "in passing on the constitutionality of a tax statute courts are concerned only with its practical operation, not its name. (Citations)."

From Carmichael v. Southern Coal & Coke Co., supra, 301 U. S. 495, 510, 57 S. Ct. 868, 81 L. Ed. 1245, 1253, 109 A. L. R. 1327, 1333; "A state legislature • • • cannot record a complete catalogue of the considerations which move its members to enact laws."

In Gregg Cartage & S. Co. v. U. S., 316 U. S. 74, 80, 62 S. Ct. 932, 935 —, 86 L. Ed. 1283, 1288, 1289, it is said concerning an assumption of fact contained in a statute, "Whether or not this assumption squares with philosophical doctrine, or even with reality, is not for our determination."

In 2 Sutherland Statutory Construction, 3d Ed. (1943), page 352, section 4808, this is found: "An act cannot be declared unconstitutional for matters contained in the preamble if the text of the act is free from constitutional objection. When the legislature enacts a statute within its constitutional power a statement of its reasons will not affect the validity of the act."

Jones v. Williams, 121 Tex. 94, 45 S. W. 2d 130, 79 A. L. R. 983, is a leading authority peculiarly applicable here. It considers a statute which remitted accrued penalties on unpaid taxes provided such taxes were paid by a certain date. It appeared from the preamble to the law the legislature purported to act under section 10, article 8 of the state constitution. The attorney general, who defended the statute in the courts, had ruled for many years there was no other constitutional basis for such measures. In an able opinion by the chief justice, the court unanimously held the act found no support in section 10, article 8 but was sustainable on other grounds notwithstanding the misapprehension of the legislature.

VI. Assuming, as the majority holds, this statute is a tax exemption measure which must be for a public purpose, I think it may fairly be upheld as an aid, encouragement or inducement to agriculture. As Governor Hickenlooper told the legislature in his message, "We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities."

It was most effectively demonstrated during the depression of the early nineteen thirties that the well-being and prosperity of the state as a whole, not to mention the security of its people and their officials, are directly dependent upon the welfare of agriculture. The prosperity of our basic industry was no less vital when this act was passed nor is it less vital now when many other countries look to us for food, and it is no exaggeration to say that the future peace of the world may depend upon the ability of agriculture to supply their needs.

The attorney general, of whose argument the majority is so critical while it all but ignores appellant's brief and argument, contends at length this act is for the benefit of agriculture and the trial court so held. It is true part of the argument to that effect is in response to one of the main attacks appellant makes on this act—that it is an appropriation of public funds for a private purpose in violation of Article III, section 31, Iowa constitution. The majority makes no mention of this attack. It is unfair for the ma-

BLEED THROUGH—POOR COPY

jority to assert, in its Division VIII, the attorney general argues "that the constitutionality of the act is saved by the appropriation feature" thereof. Actually, appellant has attacked the law as an appropriation for a private purpose and the attorney general has very properly answered such attack.

Further, in view of the authorities cited in Division V hereof, the majority is not warranted in denying that this act is for the benefit of agriculture for the reason "The credits are given, under the undisputed record and under the attorney general's argument, because the legislature felt there was a relationship between property taxed for school purposes and the number of pupils living on the property."

Our constitution contains the express mandate, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." Art. IX, 2d div., sec. 3.

In Blume v. Crawford County, 217 Iowa 545, 550, 551, 250 N. W. 733, 92 A. L. R. 757, which upholds a law directing county boards of supervisors to appropriate funds raised by taxation to county farm bureaus under certain conditions, we refer to agriculture as "the great basic industry of this state," say a law in aid thereof "is not repugnant to any constitutional provision" and "The defendant farm bureau was not organized for private purposes. On the contrary, it is an enterprise engaged in furthering the welfare and benefit of agriculture, the great basic industry of this state, and for the benefit of the public generally." The plain implication is that what benefits agriculture benefits the state as a whole. For several decisions generally like that in the Blume case see Anno. 92 A. L. R. 768, 770.

Pertinent here is this language from Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, 411:

"* * * it is a matter of common knowledge, of which everybody must take notice, that in the agricultural interests of the state lie its chief source of wealth, and that the prosperity of the state springing from this source contributes to the growth and importance of every other industry in the state, as well as to the comfort and happiness of the whole people; * * *."

Our constitution makes no attempt to define what is a public purpose nor have the courts adopted any inflexible definition. Carroll v. City of Cedar Falls, 221 Iowa 277, 283, 261 N. W. 652; 1 Cooley on Taxation, 4th Ed., page 383, section 175; 61 C. J., Taxation, section 20. Appellant concedes "what constitutes a public purpose, as distinguished from a private purpose, is sometimes difficult of determination." Numerous decisions are to that effect.

"It has been quite uniformly held by the courts that the determination of such questions inheres largely in the legislative power. Within the zone of doubt, that is * * * a public purpose which the legislature deems to be such." Grout v. Kendall (Evans, J.), 195 Iowa 467, 477, 192 N. W. 529, in which we unanimously upheld the Soldiers Bonus Act under which it was proposed to issue $22,000,000 of state bonds and levy a tax to retire them in order to pay a "bonus" to Iowa soldiers and sailors of World War I.

The authorities agree not only that the legislature has the broadest discretion on the question what is a public purpose but also that such question is a changing one. See for example State v. Dammann, 228 Wis. 147, 280 N. W. 698, 709; Laughlin v. City of Portland, 111 Me. 486, 90 A. 318, 320, 51 L. R. A. n.s. 1143, Ann. Cas. 1916C 734; Tombstone v. Macia, 30 Ariz. 218, 245 P. 677, 46 A. L. R. 828, 832; 1 Cooley on Taxation, 4th Ed., page 394, section 183.

It is also thoroughly settled that a law may serve the public interest although it benefits certain individuals or classes more than others. Carman v. Hickman County, supra, 185 Ky. 630, 215 S. W. 408, 411; State v. Dammann, supra, 228 Wis. 147, 280 N. W. 698, 707, and citations; 1 Cooley on Taxation, 4th Ed., section 181. As the majority has pointed out, it is not necessary to the validity of a tax law that all taxpayers derive equal benefits therefrom.

In Carmichael v. Southern Coal & Coke Co. (Cardozo, J.) supra, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 1253, 1255, 1256, 109 A. L. R. 1327, 1333, 1336, it is said "This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation

BLEED THROUGH—POOR COPY

or exemption, infringe no constitutional limitation. (Numerous citations.) • • • The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficient enterprise. *This Court has often sustained* • • • *exemption for the encouragement of* ceives to be a beneficent enterprise. *This Court has often* consistently recognized that the public purposes of a state, for which it may raise funds by taxation, embrace expenditures for its general welfare. (Citations) • • • whether the present expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court. (Citations)." (Italics added).

The Carmichael case, supra, upholds a state statute which imposes upon employers the obligation to pay a percentage of their payrolls into a state unemployment compensation fund and exempts those who employ agricultural labor and certain others.

Aero Mayflower T. Co. v. Georgia Pub. Serv. Com., 295 U. S. 285, 291, 55 S. Ct. 709, 79 L. Ed. 1439, 1444, upholding an exemption from an annual license fee of motor vehicles used exclusively in transporting agricultural and dairy products, observes: "We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 95, 21 S. Ct. 43, 45 L. Ed. 102, 105, in upholding an exemption from a license tax of planters and farmers grinding and refining their own sugar and molasses, states: "The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws."

In Watson v. State Comptroller, 254 U. S. 122, 124, 41 S. Ct. 43, 44, 65 L. Ed. 170, 175, it is said, "Any classification is permissible which has a reasonable relation to some permitted end of governmental action."

In connection with the federal decisions cited herein and at least one other, Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, it is important to remember that state constitutional provisions such as our Article I, section 6, are not more restrictive upon the legislative power to tax or classify than the equal protection clause of the Fourteenth Amendment. Lake Superior Iron Mines v. Lord, 271 U. S. 577, 581, 46 S. Ct. 627, 70 L. Ed. 1093, 1101; Reed v. Bjornson, 191 Minn. 264, 253 N. W. 102, 105; Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 51 Am. Jur., Taxation, section 169. We have expressed ourselves to much the same effect in Berg v. Berg, 221 Iowa 326, 331, 332, 264 N. W. 821.

In 1 Cooley on Taxation, 4th Ed., pages 400, 401, section 189, it is stated:

"Extreme cases only as warranting interference by judiciary. It is only in a clear case that a statute imposing a tax will be held invalid on the ground that the tax is not for a public purpose. The question is one not 'of exclusive legal logic, but is one more or less of policy and wisdom, properly determinable in the light of public welfare, present and future, in a broad sense, and hence is not a pure judicial law question, except in those cases clearly outside of the twilight zone.'

"Money for a particular purpose may be raised by tax, it is said in one case, if there be the 'least possibility that it will be promotive in any degree of the public welfare.' • • • And still another presents the same idea in language but little different: 'To justify the court in • • • declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable, so clear and palpable as to be perceptible by every mind at first blush.' These are very strong and sweeping assertions, but they are supported by many others equally emphatic and comprehensive, which are to be met with in the adjudications of courts."

BLEED THROUGH—POOR COPY

And from 2 Cooley, pages 1373, 1374, section 653:

"An exemption, it would seem, should be made • • • on some ground of public policy, • • • such as, at least, makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made."

In State v. Dammann, supra, 228 Wis. 147, 280 N. W. 698, 706, 709, it is said: "It is to be observed that the tendency of later cases is towards greater liberality in characterizing taxes or appropriations as public in purpose • • •."

A statement frequently made, taken from Cooley on Taxation, to which the majority subscribes, is that there must underlie a tax exemption "some principle of public policy that can support a presumption that the public interest will be subserved by the exemption granted." It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry serves the public interest. And it is fair to conclude this law in its practical operation will both benefit and encourage agriculture. At least appellant has not demonstrated the contrary beyond a reasonable doubt.

Legislatures have frequently enacted and courts have sustained tax exemption measures to encourage an industry deemed to be vital to the welfare of the state or in furtherance of some related principle of public policy. For example, in Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, in sustaining a law quite similar to the one now under attack, the court said, "We believe it reasonable for a legislature, in an agricultural state, to offer inducements to agriculture through its tax laws. (Citations)."

While the South Dakota constitution differs from ours, the Whitfield decision is direct authority here since it upholds the act as against the contention it violates the equal protection clause of the Fourteenth Amendment which the authorities agree restricts the power of state legislatures

to substantially the same extent as uniformity and equality provisions like those of our state constitution.

In Baker v. Town of West Hartford, 89 Conn. 394, 94 A. 283, an exemption from taxation of tracts planted with forest trees was upheld on the theory the beauty of New England scenery was largely dependent upon its forests and the act would benefit the lumbering industry, in which every citizen of the state has an interest.

Hermitage Co. v. Goldfogle, 204 App. Div. 710, 199 N. Y. Supp. 382, Affd. 142 N. E. 281, upholds an exemption from taxation for a limited period of certain new dwellings as an encouragement to the erection of homes.

A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109, and Schmitt v. Nord, — S. D. —, 27 N. W. 2d 910, 912, uphold statutes which impose a tax of 15 and 10 cents respectively upon each pound of butter substitute sold within the state. In the Schmitt case it is said, "Further, it (the legislature) could, we think, reasonably conclude that the fiscal interests of the state would be served by encouraging our dairy industry."

In Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770, an exemption is upheld of building and loan associations from the operation of a tax on the amount secured by mortgages, on the theory it is in recognition of the duty of the state to encourage the acquisition of homes by its citizens.

As observed in Division I hereof, we have upheld the exercise of the taxing power in aid of railroads. Stewart v. Board of Supervisors, supra, 30 Iowa 9, 1 Am. Rep. 238, cited with approval as recently as in City of Muscatine v. Swickard, 232 Iowa 1175, 1184, 6 N. W. 2d 23, 27, and Carroll v. City of Cedar Falls, 221 Iowa 277, 284, 261 N. W. 652. If resort may be had to the taxing power as an aid to railroads it would seem it may be exerted to aid agriculture.

VII. If, as stated, the classification of agricultural lands by the act in question rests upon some reason of public policy, there is no merit in appellant's attack upon the statute as such an unreasonable and arbitrary classification as to violate constitutional requirements. Furtherance of the

BLEED THROUGH—POOR COPY

public policy furnishes ample basis for the classification. See Cook v. Hannah, 230 Iowa 249, 253, 297 N. W. 262, 264; Hubbell v. Higgins, 148 Iowa, 36, 39, 40, 126 N. W. 914, Ann. Cas. 1912B 822; 16 C. J. S., Constl. Law, section 465d; 1 Cooley on Taxation, 4th Ed., page 713, section 334.

However, I am compelled to indicate disagreement with the holding in the majority's Divisions IV and V that the classification of agricultural lands by the act is purely arbitrary. The purport of such holding is that the legislature of this state is deprived by our constitution of the power to classify agricultural lands for purposes of taxation. This court has never so held, nor does any decision of ours support such holding. On the contrary we sustained such classification in Leicht v. City of Burlington, 73 Iowa 29, 31, 34 N. W. 494, which has stood for 60 years.

In its attempt to distinguish the Leicht case, it would seem the majority overlooked the statement in the opinion that "the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes." In Farwell v. Brick Mfg. Co., 97 Iowa 286, 294, 295, 66 N. W. 176, 35 L. R. A. 63, these words are quoted as stating the effect of the Leicht decision.

Further, I think Keefner v. Porter, supra, 228 Iowa 844, 852, 293 N. W. 501, implies such classification as found in the act in question would be valid. At least the opinion observes, "If there was anything that distinguished agricultural land located in an independent school district from similar land in other school districts we would have a different situation." The present act attempts no distinction between agricultural lands lying in different school districts.

As the majority observes, there is no special limitation in our constitution on the legislative power to grant tax exemption. Many state constitutions specify what exemptions may be granted and forbid others. 51 Am. Jur., Taxation, section 502; 2 Cooley on Taxation, 4th Ed., page 1382, section 661. Therein lies a controlling distinction between the present case and a few cases from other jurisdictions which at first blush may seem in conflict with some of the views herein expressed.

It is of course elementary that the legislature has wide discretion in determining what is a reasonable classification

in any kind of legislation. We have repeatedly and uniformly so held. See for example Cook v. Hannah, supra, 230 Iowa 249, 253, 297 N. W. 262, 265, and citations. However, in the enactment of tax laws courts accord to the lawmakers a broader power of classification than in some other legislation. Citizens Tele. Co. v. Fuller, 229 U. S. 322, 329, 33 S. Ct. 833, 57 L. Ed. 1206, 1213. Further, a classification, like this one, for the purpose of proportioning the tax may be valid even though such a classification would be invalid for the purpose of applying a complete exemption Louisville Gas & E. Co. v. Coleman, supra, 277 U. S. 32, 38, 48 S. Ct. 423, 72 L. Ed. 770, 774. See 1 Cooley on Taxation, 4th Ed., page 719, section 336.

A classification for tax purposes is not open to objection unless it "precludes the assumption" it "was made in the exercise of legislative judgment and discretion." Stebbins v. Riley (Stone, J.), 268 U. S. 137, 143, 45 S. Ct. 424, 69 L. Ed. 884, 889, 44 A. L. R. 1454, 1460; Campbell v. California, 200 U. S. 87, 26 S. Ct. 182, 50 L. Ed. 382. "The purpose for which property is kept or used has long been a recognized, if not a favorite, basis for distinction in taxation." 51 Am. Jur., Taxation, section 182. See also 61 C. J., Taxation, section 58, page 129; 1 Cooley on Taxation, 4th Ed., page 717, section 335.

It has long since been recognized that discriminations in taxation are not only permissible but sometimes the best interests of society require discriminations "which are necessary for the encouragement of needed and useful industries." Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 10 S. Ct. 533, 535, 33 L. Ed. 892, 895, repeatedly cited with approval, which upheld a discrimination between corporate and other securities.

The applicable law, amply supported by decisions, is well stated in 16 C. J. S., Constl. law, sections 520, 521, pages 1046-1055:

"The states may, therefore, tax certain classes of property to the exclusion of other classes, and, for different classes of persons or property, may prescribe different * * * rates of taxation, * * * even though the difference between the subjects taxed is not great. * * *

BLEED THROUGH—POOR COPY

"To be unconstitutional, the classification must be manifestly arbitrary and unreasonable, and not possibly so. Since taxation is so largely a question of policy, the legislature possesses the largest measure of discretion in these matters; and the courts will not declare a tax statute void as a violation of the equal protection guaranty so long as the classification or selection made by it is based on a reason, even though in their opinion the reason is a poor one and the statute itself is unjust, the test being good faith, not wisdom. • • • The state legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.

"Applying the foregoing principles *a state may, for tax purposes,* • • • *classify lands into tracts used for agricultural purposes and tracts used for other purposes.* • • •

"• • • a state may grant exemptions from taxes imposed by general laws; and such exemptions may be based on any reason that the legislature deems sufficient, with the limitation, however, that they must be founded on some reason and not on mere caprice." (Italics added.)

In People, ex rel. Hatch v. Reardon, 184 N. Y. 431, 445, 77 N. E. 970, 974, 8 L. R. A. n. s. 314, 112 Am. St. Rep. 628, 6 Ann. Cas. 515 (Affd. 204 U. S. 152, 27 S. Ct. 188, 51 L. Ed. 415, 9 Ann. Cas. 736), it is said:

"While a tax upon a particular house, or horse, or the houses or horses of a particular man, or on the sale thereof, would obviously invade a constitutional right, still a tax upon all houses, leaving barns and business buildings untaxed, or upon all horses or the sale thereof, leaving sheep and cows untaxed, however unwise, would be within the power of the Legislature This is true of a tax on all houses with 'more than one chimney,' or 'with more than one hearthstone,' or on all race horses. The power of taxation necessarily involves the right of selection, which is without limitation, provided all persons in the same situation are treated alike and the tax imposed equally upon all property of the class to which it belongs. (Citations)."

It is true, of course, there are common characteristics between agricultural land and other real estate in the matter of taxation for school purposes. But we cannot say there are not characteristics that differentiate it from other realty in relation to school taxes. This language from Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, in which, as stated, a very similar statute was unanimously upheld, is worth repeating:

"We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source. See Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, which held valid a statute which excepted from its operation lands used exclusively for agricultural purposes if owned by individuals, but not if owned by corporations. It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due to adequate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land. For example, a merchant's business or even a railroad's business, which is dependent somewhat upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. So far as concerns real estate, which is set apart primarily for homes or residences by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture. Land used exclusively for agriculture consists of a comparatively large tract which is the whole base of the business. This is not true of land used in other businesses. It seems to us that repeatedly courts have sustained classifications founded upon reasons much more obscure than those here presented. * * *

"In all probability other considerations occurred to the Legislature in making the distinction, but the possible considerations herein pointed out are sufficient in our opinion to prevent us from holding that there could be no possible rational basis for the legislative classification."

BLEED THROUGH—POOR COPY

We have gone much further in sustaining the power of the legislature to classify than we are asked to go here. See for example State, ex rel. Welsh v. Darling, 216 Iowa 553, 246 N. W. 390, 88 A. L. R. 218; Cook v. Hannah, 230 Iowa 249, 297 N. W. 262, and cases cited, Cert. denied 314 U. S. 691, 62 S. Ct. 361, 86 L. Ed. 553; Cook v. Dewey, 233 Iowa 516, 10 N. W. 2d 8; Knudson v. Linstrum, 233 Iowa 709, 8 N. W. 2d 495, which involved a law for the assessment and collection of taxes.

The two Cook cases, supra, considered curative acts applicable to tax proceedings which had the practical effect of discriminating between classes of taxpayers in the rate of taxation. As pointed out in Cook v. Hannah, lawmakers are powerless to cure by subsequent legislation what they could not have authorized in the first instance. And the power to enact curative laws is uniformly held to be subject to the same constitutional limitations as the exercise of any other legislative power. Anno. 140 A. L. R. 959, 972.

Other courts have sustained classifications for tax purposes less substantial than this classification of agricultural lands for the purpose of applying a different tax rate. Some of these decisions are mentioned in Division VI hereof. Attention is now called to some others.

There are sufficient differences between anthracite and bituminous coal to justify a tax on one while the other remains exempt. Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237. An exemption was upheld of tracts of less than 1000 acres from a provision that lands were forfeited by failure for five years to cause them to be entered on the books of the commissioners of revenue. King v. Mullins, 171 U. S. 404, 435, 18 S. Ct. 925, 43 L. Ed. 214, 226. The exclusion of notes secured by real estate mortgages from the operation of a tax on intangibles was sustained in Love v. Silverthorn, 187 Okla. 114, 101 P. 2d 254, 129 A. L. R. 676. A law which exacted a license fee from those engaged in the laundry business other than the steam laundry business but did not apply to women so engaged where not more than two women were employed was upheld in Quong Wing v. Kirkendall, 223 U. S. 59, 32 S. Ct. 192, 56 L. Ed. 350.

Apartment Operators' Assn. v. City of Minneapolis, 191 Minn., 365, 254 N. W. 443, and cases therein cited, uphold classifications for taxation based largely upon use of the property, which apply a different rate to each class. One class consists of real estate in which iron ore is known to exist. The ore, mined or unmined, is assessed at 50 per cent of value. Another class is unplatted realty, assessed at 33⅓ per cent of its value. All other real estate is assessed at 40 per cent of value. Another class is unplatted real estate used as a homestead, assessed at 20 per cent of value, provided if the value exceeds $4000, the excess is assessed at 33⅓ per cent. All platted realty used as a homestead is assessed at 25 per cent of value, provided any value in excess of $4000 is assessed at 40 per cent. In unanimously sustaining the classifications of homestead property, the court says:

"That use is a proper basis for classification cannot now well be questioned. • • • The classification in chapter 359, in so far as it is based upon use, is in line with the policy of both the state and nation as evidenced by previous legislation enacted for the benefit and relief of occupant owners of homes. Such classification has a tendency to encourage the use of land for homestead purposes and is in furtherance of a sound public policy. The stability of government is promoted thereby. The obvious object of the Legislature was to provide for the necessary funds with which to carry on governmental functions without placing too heavy a burden upon real estate used by the owner as his home. The difference in use of the property has a fair and substantial relation to that object of the Legislature, and there is no discrimination between persons in similar circumstances; it operates equally upon all coming within the respective classes."

VIII. The majority sees "Fundamental differences that are readily apparent" between the act in question and our homestead tax credit law (chapter 426, Code, 1946) and the soldiers tax exemption statute (Code section 427.3) and warns that the constitutionality of these laws has not been assailed in this court. We are not told what these funda-

BLEED THROUGH—POOR COPY

mental differences are. I confess inability to see them, especially as to the homestead tax credit law as construed by this court in Ahrweiler v. Board, 226 Iowa 229, 283 N. W. 889.

I think this act is directly analogous to the homestead tax law. It is plainly patterned after the earlier statute. The public policy that is served by the former is the encouragement of the industry on which the prosperity of the state largely depends. The public policy served by the other, as stated in the Ahrweiler opinion, is the encouragement of home ownership. Perhaps the ownership of homes is more beneficial to the state than the welfare of agriculture. If so, the distinction is largely of degree and not of kind.

The various soldiers tax exemption measures are generally upheld upon a somewhat different consideration—that the legislature has the power to discharge, at least in part, the state's moral obligation to those who served in the armed forces in time of emergency. I think the constitutional basis for their enactment is not more secure than for the act in question.

While it is true this court has not passed upon the constitutionality of the homestead tax credit act or the soldiers tax exemption statute, there are intimations the former act is valid in Ahrweiler v. Board, supra, and Eysink v. Board, 229 Iowa 1240, 1247, 296 N. W. 376, 379. At least the Ahrweiler opinion emphasizes the fact the homestead tax law benefits the public at large by encouraging home ownership and the Eysink case calls attention to the legislature's wide discretion in the matter of classification. In Apartment Operators' Assn. v. City of Minneapolis, supra, 191 Minn. 365, 254 N. W. 443, discussed in Division VII hereof, the power to apply different tax rates to homesteads is upheld.

IX. Under the logic of the majority opinion, absolute equality in the matter of taxation is required. An "iron rule of equal taxation" is neither attainable or necessary. See for example, Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579, and citations; Tolerton & W. Co. v. Board Assmt. & Rev., supra,

222 Iowa 908, 912, 270 N. W. 427; Colgate v. Harvey, 296 U. S. 404, 56 S. Ct. 252, 255, 80 L. Ed. 299, 102 A. L. R. 54, 61; Bell's Gap R. Co. v. Penna., supra, 134 U. S. 232, 237, 10 S. Ct. 533, 535, 33 L. Ed. 892, 895.

The legislative policy of this state throughout its history has been to grant numerous tax exemptions. It may be conceded such policy is of doubtful wisdom. It may even be admitted the act under consideration is unwise. But of course the question here is one of legislative power, not wisdom.

The very next section in our Code (of 1946) following the act in question lists 22 classes of property that are exempt from taxation. Many of the classes in turn consist of different enumerations. In all, something like 70 items of property are exempt. Under the majority's reasoning some of these exemptions of long standing cannot be upheld although apparently they have never been questioned.

If there is no rational basis for partial exemption from school taxes of agricultural land, how can the total exemption be upheld of all agricultural produce harvested by or for the taxpayer within the previous year? This exemption has stood since the Code of 1851. This provision removes from tax liability property of enormous value. What of the exemption in subsection 20, section 427.1, of stock of telegraph and telephone companies and several other designated kinds of corporations? If it be suggested these exemptions are for the purpose of avoiding "double taxation," why is not stock of railroads and other corporations included in the exemption? They pay taxes on their property just as telephone and telegraph companies do. Many other related questions might be asked.

X. The majority's Division IX recognizes the legislature's power to pass laws in aid of agriculture but says this is not such an act because it does not apply to the owners of all agricultural lands.

Appellant has attacked the classification provided by this law as unreasonable and arbitrary, and thus unconstitutional, in only three respects: (1) because of the 10-acre limitation (this seems to be the principal ground relied on); 2) it applies only to lands taxed for school purposes in

BLEED THROUGH—POOR COPY

excess of 15 mills; and 3) it applies only to agricultural lands. The majority's Divisions IV and V sustain only this third attack. No mention in the entire opinion is made of the second attack. And the majority states in its Division V it does not consider the validity of the 10-acre limitation but adds that if the right is granted to exempt agricultural land from the burden of a general tax "we would be inclined to agree with counsel for appellees as to the legislature's right to make the limitation of 10 acres. Leicht v. Burlington, supra, supports such a right of sub-classification within the general classification of agricultural lands."

In view of this conclusion of the majority, appellant's second and third attacks have not been considered herein. Nor should the majority resort to either of them in its Division IX. To do so is a repudiation of the position taken in its Divisions IV and V.

Division IX further holds the act in question is not a valid encouragement to agriculture because it is not such a law as appropriates funds to county farm bureaus or authorizes a tax for the suppression of bovine tuberculosis or provides for the eradication of barberry plants. Also, without the citation of authority, that "the aid to agriculture that is part of the public policy of this state means something that is designed to aid the productive capacity of those engaged in the industry." We have never before so restricted the legislature's power. But even assuming it to be a proper restriction, it is by no means clear the productive capacity of agriculture will not be encouraged by the present act fully as much as by such laws as the majority concedes and we have held are valid.

Three decisions are cited in support of the majority's Division IX. Lancaster v. Clayton (1887), 9 Ky. 611, 5 S. W. 864, properly invalidates a special attempt to exempt from taxation one particular property—a hotel. It is obviously inapplicable to the case at bar. The decision states, "It is often difficult to draw a line showing clearly the degree of benefit the public must derive from an enterprise in order to sustain an exercise of the taxing power in its favor."

Deering & Co. v. Peterson (1898), 75 Minn. 118, 77 N. W. 568, cited by the majority, holding invalid an appropriation for seed grain loans to farmers "whose crops were de-

stroyed by hail or storms last year" is also not analogous. Nor is In re Opinion of the Judges (1932), 59 S. D. 469, 240 N. W. 600, wherein the court holds tax moneys could not be used to furnish "aid in the form of feed or feed loans to the citizens who may need same for carrying their livestock through the winter."

Apparently the South Dakota court did not feel its earlier decision was at all analogous to Great Northern R. Co. v. Whitfield, supra (1937), 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, in which a law very similar to the act in question was unanimously upheld as a valid inducement to agriculture. In re Opinion of the Judges, supra, is not mentioned in the Whitfield opinion and apparently was not cited in the briefs. Why the majority should ignore the Whitfield case is not clear. The majority opinion is a repudiation of the doctrine that a state may, through its tax laws, offer inducements to an industry deemed essential to the state's welfare.

But recent decisions are not all in line with Deering & Co. v. Peterson, supra. It is regrettable the majority sees fit to commit this court to a decision contrary to the trend of authority. After stating the doctrine announced in Deering & Co. v. Peterson and another early decision, State ex rel. Griffith v. Osawkee Twp., 14 Kan. 418, 19 Am. Rep. 99, it is said in 2 Am. Jur., Agriculture, section 28: "On the other hand, there is respectable authority supporting the more recent rule that emergency seed and feed loan statutes may be a proper exercise of governmental power. • • • It should be observed that more recent decisions in jurisdictions formerly adhering to the rule that seed and feed loan legislation in aid of farmers whose crops were destroyed is invalid have qualified, if not repudiated, the rigid reasoning upon which the earlier determination rested."

3 C. J. S., Agriculture, section 9b, states: "Certain statutes for direct state aid to individuals, as, for example, by means of loans on farm property or, in an emergency, by financing farmers and stock raisers, have been held valid; on the other hand, a statute providing for seed-grain loans has been held invalid as appropriating public money for a private purpose (citing Deering & Co. v. Peterson)."

BLEED THROUGH—POOR COPY

For decisions upholding acts quite similar to the law held invalid in Deering & Co. v. Petersen, see Anno. 92 A. L. R. 768.

The majority's condemnation of this act as "A direct, specific, appropriation of public funds • • • to individuals engaged in the private business of farming, (is) for the private purpose of aiding them in their business" is not justified. It is true the owners of agricultural lands to which the law directly applies benefit therefrom more than other members of the public. But this does not invalidate it.

The taxpayer receives no money under the act. A ceiling of 15 mills for taxation for school purposes is placed upon his property and the appropriation makes up the resulting loss to the school districts. It is no more a direct appropriation to the taxpayer than is the homestead tax credit law, the soldiers tax exemption statute or any other tax exemption measure. Under the majority's logic, any tax exemption of private property could be invalidated and the legislature deprived of the power to exempt from taxation any property not held for a public purpose.

I recognize of course our right and duty to declare statutes void if their violation of the constitution, as we have so frequently said, "is so clear, plain, and palpable as to leave no reasonable doubt on the subject." In my opinion this is not such a case.

I would affirm.

Hale and Smith, JJ., join in this dissent.

APPENDIX "C"

IN THE SUPREME COURT OF IOWA

Filed December 14, 1948

171

47072

LAURA DICKINSON, *Appellant*,

v.

C. FRED PORTER, State Comptroller of the State of Iowa, and J. M. GRIMES, Treasurer of State, of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa, *Appellees*

Appeal from Dubuque District Court.—John G. Chalmers, Judge

Equity suit for declaratory judgment that the Iowa Agricultural Land Tax Credit Act (Ch. 426, Code, 1946) violates certain provisions of the state and federal constitutions. From a decree in favor of defendants plaintiff has appealed. —Affirmed.

Clewell & Cooney, and Wm. C. Fuerste, all of Dubuque, for appellant.

Robert L. Larson, Attorney General, Oscar Strauss, Assistant Attorney General, Wisdom & Wisdom, all of Des Moines, and F. H. Becker, of Dubuque, County Attorney, for appellees.

GARFIELD, J.:

Because a rehearing was granted, the former opinion herein, reported in 31 N. W. 2d 110, is withdrawn and the following substituted therefor.

Plaintiff, who owns a 4-acre tract used solely for agricultural purposes in Epworth School District, Dubuque County, challenges the Agricultural Land Tax Credit Act (Ch. 426,

BLEED THROUGH—POOR COPY

Code, 1946) on the grounds, insofar as here urged, it violates: (1) Article III, section 30, and Article I, section 6, Iowa constitution, and section 1 of the Fourteenth Amendment to the federal constitution in that the law lacks uniformity and provides arbitrary and discriminatory classifications, and (2) Article III, section 31, Iowa constitution, in that it appropriates public money for a private purpose. The trial court held the law was not unconstitutional upon the grounds urged and plaintiff has appealed.

The challenged act, passed by the 51st General Assembly (Ch. 192) in 1945, appropriates for each fiscal year $500,000 to be apportioned as a credit against the tax on each tract of agricultural lands in school districts where the millage for the general school fund exceeds 15 mills. The amount of such credit is the amount by which the school tax exceeds a tax based on a levy of 15 mills. To be entitled to the credit each owner must deliver to the assessor or file with the county auditor a verified statement and designation of the agricultural lands upon which credit is claimed. (Section 426.4.) If the appropriation (of $500,000) is insufficient to pay the credits in full they shall be paid on a pro rata basis. (Section 426.9.)

Agricultural lands are defined by section 426.2 as "all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes."

The 48th General Assembly in 1939 by chapter 109 passed a law similar to the present Code chapter 426 except that it applied only to "agricultural lands" within independent school districts. An owner of agricultural land in a consolidated school district challenged the constitutionality of that act on all grounds now urged by plaintiff against chapter 426. We held the earlier law "clearly discriminates against those owning agricultural lands not located in an independent school district." We observed however, "If there was anything that distinguished agricultural land located in an independent school district from similar land in other school districts we would have a different situation." Keefner v. Porter, 228 Iowa 844, 852, 293 N. W. 501.

Following this decision the appointment of a commission was authorized by chapter 152, Acts 49th General Assembly, in 1941, and again by chapter 314, Acts 50th General Assembly, in 1943, to assist in the revision of laws relating to education and to prepare a proposed school code. The 50th General Assembly (Ch. 314, sec. 2) directed that the commission authorized by it "shall give particular attention to the tax structure of the State of Iowa in so far as it concerns the school system of the state, and make recommendations with reference to same, * * *." This commission in effect recommended adoption of the present law which was passed by the 51st General Assembly with only two dissenting votes in the house and one in the senate. This act applies the limitation of 15 mills to "agricultural lands" in all school districts, not merely independent districts, as did the earlier law held invalid in Keefner v. Porter, supra.

Since the single basis of attack sustained by the Keefner opinion was eliminated in the enactment of the present statute, of course it is not now advanced. In other respects, however, plaintiff's petition, briefs and arguments are largely patterned after and copied from plaintiff's petition, briefs and arguments in the Keefner case. Of course if the contentions this plaintiff urges are sound now, they were equally so when Keefner v. Porter was decided. It would seem we were not then convinced of the soundness of such grounds.

We should hesitate to declare the present act void since the legislature, after the Keefner opinion was filed, reasserted its power to enact the present law with the elimination of the objectionable feature pointed out in that opinion. See Stewart v. Board of Supervisors, 30 Iowa 9, 1 Am. Rep. 238, a leading authority which upholds a law (passed a second time with modifications, after a decree of unconstitutionality) authorizing a tax in aid of railroads, frequently cited throughout the subsequent history of this and other courts. See also Minsinger v. Rau, 236 Pa. 327, 84 A. 902, which considers an attack upon a law recommended by a commission and passed by two legislative sessions.

I. All presumptions are in favor of the constitutionality of this statute and it will not be held invalid unless it is

clear, plain and palpable that such decision is required. Miller v. Schuster, 227 Iowa, 1005, 1014, 1015, 1020, 289 N. W. 702, and citations; Loftus v. Dept. of Agriculture, 211 Iowa 566, 570, 232 N. W. 412, and citations; 16 C. J. S., Constl. Law, section 99a.

We have pointed out repeatedly the General Assembly has power to enact any kind of legislation it sees fit provided it is not clearly and plainly prohibited by some provision of the state or federal constitutions. Carlton v. Grimes, 237 Iowa 912, 943, 23 N. W. 2d 883, 899, and citation; Loftus v. Dept. of Agriculture, supra, 211 Iowa 566, 569, 570, 232 N. W. 412. See also 16 C. J. S., Constl. Law, section 70.

It is not our province to pass upon the policy, wisdom, advisability or justice of a statute. The remedy for unwise or oppressive legislation within constitutional bounds is not to be found in the courts but by appeal to the legislators. McQuire v. Railway, 131 Iowa 340, 349, 108 N. W. 902, 33 L. R. A., n. s., 706, and citations. See also Merchants Supply Co. v. Iowa Sec. Comm., 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579; 11 Am. Jur., Constl. Law, section 138.

The burden does not rest upon defendants (state and county officials charged with duties under the law) to convince us the act is constitutional. Plaintiff has the burden to satisfy us beyond a reasonable doubt (Miller v. Schuster and Loftus v. Dept. of Agriculture, both supra, and citations) the act violates the constitutional provisions invoked and to point out the manner or respect in which it violates them. In other words, she "must point out and state with particularity the details of supposed invalidity." 11 Am. Jur., Constl. Law, section 132. To the same effect are 16 C. J. S., Constl. Law, section 96 a, page 224; Peverill v. Board of Supervisors, 201 Iowa 1050, 1056, 205 N. W. 543. See also Quong Wing v. Kirkendall (Holmes, J.), 223 U. S. 59, 63, 64, 32 S. Ct. 192, 193, 56 L. Ed. 350, 352.

Further, it is plaintiff's burden to negative every conceivable basis which may support this statute. Madden v. Kentucky, 309 U. S. 83, 88, 60 S. Ct. 406, 84 L. Ed. 590, 593, 125 A. L. R. 1383, 1386, cited with approval in Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 16 N. W. 2d 572, 578. See also Carmichael v. Southern Coal & Coke Co. (Stone, J.), 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed.

1245, 109 A. L. R. 1327, 1333, 1336, 1337, also cited with approval in the Merchants Supply Co. case; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78, 79, 31 S. Ct. 337, 340, 55 L. Ed. 369, 377, Ann. Cas. 1912C 160, from which we quote with approval in Berg v. Berg, 221 Iowa 326, 332, 264 N. W. 821; Tolerton & W. Co. v. Board Asst. and Rev. 222 Iowa 908, 913, 914, 270 N. W. 427.

II. Article III, section 30, and Article I, section 6, of our state constitution, invoked by plaintiff, require that the law in question have a uniform operation throughout the state. The effect of section 1, Fourteenth Amendment to the federal constitution as applied to this case is substantially the same as these uniformity provisions of our own constitution. In general, if a law does not offend against one constitution it is inoffensive to the other. Berg v. Berg, 221 Iowa 326, 331, 332, 264 N. W. 821; Lake Superior Cons. Iron Mines v. Lord, 271 U. S. 577, 581, 46 S. Ct. 627, 628, 70 L. Ed. 1093, 1101; State v. Henneford, 3 Wash. 2d 48, 99 P. 2d 616, 619; Schmitt v. Nord, S. D. , 27 N. W. 2d 910, 912; Reed v. Bjornson, 191 Minn. 254, 253 N. W. 102, 105; City of Jackson v. Mississippi Fire Ins. Co., 132 Miss. 415, 95 So. 845, 847; 51 Am. Jur., Taxation, section 169.

Both in her petition and in argument here plaintiff's complaint is that the statute conflicts with the above constitutional provisions in that the classifications in the law are unreasonable and arbitrary. It is contended there is no basis for separately classifying (1) agricultural lands (2) of ten acres or more (3) in school districts where the millage exceeds 15 mills. The contention the act appropriates public money for a private purpose in violation of Chapter III, section 31, Iowa constitution, will be considered later.

If there is any reasonable ground for the classifications in this law and it operates equally upon all within the same class, there is uniformity in the constitutional sense and no violation of any constitutional provision invoked by plaintiff. Iowa Mot. V. Assn. v. Board of Railroad Comm., 207 Iowa 461, 468, 221 N. W. 364, 75 A. L. R. 1, affd. 280 U. S. 529, 50 S. Ct. 151, 74 L. Ed. 595; 51 Am. Jur., Taxation, section 169. See also Hubbell v. Higgins, 148 Iowa 36, 39, 126 N. W. 914, Ann. Cas. 1912B 822; 61 C. J., Taxation, section 58.

BLEED THROUGH—POOR COPY

The statute amounts to a legislative finding there are sufficient differences between property to which the act applies and other property to justify the classification. We will not interfere unless plaintiff has proven the classification does not rest on a reasonable basis but is essentially arbitrary and palpably discriminating. Iowa Mot. V. Assn. v. Board of Railroad Comm., supra.

It is well recognized the legislature has a wide discretion in determining classifications to which its acts shall apply. Cook v. Hannah, 230 Iowa 249, 253, 297 N. W. 262, 265, and citations. In tax matters even more than in other fields legislatures possess the greatest freedom in classification. Madden v. Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 593, 125 A. L. R. 1383, 1385. See also Citizens Telephone Co. v. Fuller, 229 U. S. 322, 329, 33 S. Ct. 833, 57 L. Ed. 1206, 1213; 1 Cooley, 4th Ed., section 334, pages 715, 716; 16 C. J. S., Constl. Law, section 520, page 1048.

It is not sufficient that the court may regard the reason for the classification a poor one. 16 C. J. S., Constl. Law, section 520, page 1049; 1 Cooley on Taxation, 4th Ed., section 334, page 714. The differences upon which the classification is based need not be great or conspicuous. 1 Cooley, 4th Ed., section 334, page 714, and citations.

"An iron rule of equal taxation" is neither attainable or necessary. Merchants Supply Co. v. Iowa Sec. Comm., supra, 235 Iowa 372, 383, 384, 16 N. W. 2d 572, 578, 579, and citations; Madden v. Kentucky, supra; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 10 S. Ct. 533, 33 L. Ed. 892, 895.

Further, a classification, as in the act here, for the purpose of proportioning the tax may be valid even though such a classification would be invalid for the purpose of applying a complete exemption. See Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 38, 48 S. Ct. 423, 72 L. Ed. 770, 774, from which we quote in Keefner v. Porter, supra (228 Iowa 844, 848); 1 Cooley, 4th Ed., section 336, page 719; 293 N. W. 501.

III. We consider first the classification of lands used for agricultural purposes. We are not convinced our legis-

lature may not separately classify such lands for taxation for school purposes. Nor have we ever held such a classification invalid.

"The purpose for which property is kept or used has long been a recognized, if not a favorite, basis for distinction in taxation." 51 Am. Jur., Taxation, section 182. See also 61 C. J., Taxation, section 58, page 129; 1 Cooley, 4th Ed., section 335, page 717; Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 445.

It is true of course there are common characteristics between agricultural land and other realty in the matter of taxation for school purposes. But we cannot say there are not characteristics which differentiate it from other realty in relation to school taxes. We are not convinced the legislature could not with reason conclude that agricultural land derives less benefit, in enhanced value or otherwise, from the money raised by school taxes than other real estate. City or town residence property or real estate used for business purposes may well be affected by our school system in quite a different way than land used for agricultural purposes which consists of comparatively large tracts. The legislature could reasonably have concluded that agricultural lands are taxed excessively for school purposes as compared with property devoted to other uses and that such taxes should be equalized in accordance with benefits received.

Very likely other reasons occurred to the legislature why a distinction should be made between agricultural lands and other realty. We have indicated enough to justify our unwillingness to hold there is no possible rational basis for such classification.

It is no defense to the collection of a tax for school or other purposes that the person or property taxed is not actually benefited by the expenditure of the proceeds of the tax nor as much benefited as others. Accordingly a childless, nonresident or corporate owner of property may be taxed for school purposes. However, there is nothing in the constitutional provisions invoked by plaintiffs which prevents our legislature from considering actual benefits received in classifying persons or property for taxation.

BLEED THROUGH—POOR COPY

Nor has any decision come to our attention which demands a holding here the lawmakers are without such power.

The obligation of the individual to pay taxes is founded in his participation in the benefits arising from their expenditure. Thomas v. Gay, 169 U. S. 264, 277, 18 S. Ct. 340, 42 L. Ed. 740, 745. If it were practicable and possible to do so, all taxes should be apportioned among the people according to the benefit each receives. See 1 Cooley, 4th Ed., section 89, page 213.

That in classifying persons or property for taxation legislatures may consider actual benefits is held in Great Northern R. Co. v. Whitfield, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483; Reed v. Bjornson, supra, 191 Minn. 254, 253 N. W. 102, 108, and citations; Apartment Operators' Assn v. City of Minneapolis, supra, 191 Minn. 365, 254 N. W. 443, 445; Nance v. Harrison, 176 Ga. 674, 169 S. E. 22, 26. See also Clark v. Kansas City, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392; Philadelphia, B. & W. R. Co. v. Mayor and Council, etc., — Del. —, 57 A. 2d 759, 765.

Leicht v. City of Burlington, 73 Iowa 29, 31, 34 N. W. 404 (1887), upheld as uniform in the constitutional sense chapter 47, Acts 16th General Assembly (as amended, section 616, Code 1897, section 404.4, Code, 1946), which completely exempted from taxation for any municipal purpose, except road tax, lands within the extended limits of a city or town containing more than ten acres, occupied and used for agricultural purposes. The opinion states "the design of the legislature evidently was to exempt property which is used essentially for agricultural purposes."

The language just quoted is repeated in Farwell v. Brick Mfg. Co., 97 Iowa 286, 294, 295, 66 N. W. 176, 35 L. R. A. 63, apparently as stating the effect of the decision in Leicht v. Burlington, supra. 1 Cooley, 4th Ed., Section 284, page 599, says that in Iowa an exemption from city taxation of agricultural or unplatted land in a city has been upheld, citing the Leicht case.

Philadelphia, B. & W. R. Co. v. Mayor and Council, etc., supra, Del. Ch, 57 A. 2d 759, 765, 766 (1948), cites Leicht v. City of Burlington, supra, with apparent approval and sustains a classification for taxation for city and school purposes under which rural or suburban property in a

city is taxed at half the rate applied to the built-up portions of the city. The court says, "inherent differences in its nature or character, and even in its use, may be sufficient" to support a classification of property for tax purposes.

Clear Lake Co-op. L. S. S. Assn. v. Weir, 200 Iowa 1293, 1298, 1299, 206 N. W. 297, upholds as of uniform operation what is now section 498.19, Code, 1946, relating to non-profit-sharing co-operative associations. The opinion states, "There is no industry to be found anywhere in which classifications based thereon are more natural, obvious, and exclusive than in agriculture. It is as distinct in its character as mining, manufacturing, banking, or any other branch or division into which society is economically divided."

Tigner v. Texas, 310 U. S. 141, 147, 60 S. Ct. 879, 84 L. Ed. 1124, 1128, sustains a state antitrust law which does not "apply to agricultural products or livestock in the hands of the producer or raiser." After referring to legislation which differentiates between agriculture and other industry, the court says, "These various measures are manifestations of the fact that in our national economy agriculture expresses functions and forces different from the other elements in the total economic process. Certainly these are differences which may be acted upon by the lawmakers."

Great Northern R. Co. v. Whitfield, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, unanimously holds a statute quite similar to that here challenged does not violate the Fourteenth Amendment to the federal constitution which, under the authorities cited in Division II hereof and others, restricts the legislative power to substantially the same extent as the uniformity provisions of our state constitution. This language from the opinion is applicable here:

"We believe it true also that the Legislature could reasonably conclude that the benefit to agricultural land from school taxes is less than the benefit to other lands from the same source * * *. It is conceivable that the benefits from education so far as real estate is concerned, whether it be the enhanced value of that real estate due

BLEED THROUGH—POOR COPY

to adequate educational facilities offered or some other benefit, reflects itself less in real estate used exclusively for agricultural purposes than any other land. For example, a merchant's business or even a railroad's business, which is dependent somewhat upon real estate in the operation of the business, might be quite differently affected by an adequate educational system located in the community, than the business of agriculture. So far as concerns real estate, which is set apart primarily for homes or residences by being platted, obviously educational advantages reflect themselves in that real estate differently from the manner in which they reflect themselves in land used exclusively for agriculture. Land used exclusively for agriculture consists of a comparatively large tract which is the whole base of the business. This is not true of land used in other businesses. It seems to us that repeatedly courts have sustained classifications founded upon reasons much more obscure than those here presented. * * *

"In all probability other considerations occurred to the Legislature in making the distinction, but the possible considerations herein pointed out are sufficient in our opinion to prevent us from holding that there could be no possible rational basis for the legislative classification."

Clark v. Kansas City, supra, 176 U. S. 114, 20 S. Ct. 284, 44 L. Ed. 392, upholds legislation under which land used for agricultural purposes when not owned by corporations is not subject to municipal taxes. The decision is direct authority for the legislative right to classify agricultural lands and other lands for taxation for municipal purposes.

16 C. J. S., Constl. Law, section 520, pages 1046-1052, states: "The states may, therefore, tax certain classes of property to the exclusion of other classes, and, for different classes of persons or property, may prescribe different * * * rates of taxation * * * even though the difference between the subjects taxed is not great. * * * Applying the foregoing principles, a state may, for tax purposes * * * classify lands into tracts used for agricultural purposes and tracts used for other purposes."

Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 444, 445, and cases therein cited, uphold classifications for taxation based largely upon use of the property, which apply a different rate to each class. One class consists of real estate in which iron ore is known to exist. The ore, mined or unmined, is assessed at 50 per cent of value. Another class is unplatted realty, assessed at 33⅓ per cent of its value. All other real estate is assessed at 40 per cent of value. Another class is unplatted real estate used as a homestead, assessed at 20 per cent of value, provided if the value exceeds $4000, the excess is assessed at 33⅓ per cent. All platted realty used as a homestead is assessed at 25 per cent of value, provided any value in excess of $4000 is assessed at 40 per cent. In unanimously sustaining the classifications of homestead property, the court says:

"That use is a proper basis for classification cannot now well be questioned. • • • The obvious object of the Legislature was to provide for the necessary funds with which to carry on governmental functions without placing too heavy a burden upon real estate used by the owner as his home. The difference in use of the property has a fair and substantial relation to that object of the Legislature, and there is no discrimination between persons in similar circumstances; it operates equally upon all coming within the respective classes."

We have gone as far in sustaining the power of the legislature to classify as we have gone here. See for example State, ex rel. Welsh v. Darling, 216 Iowa 553, 246 N. W. 390, 88 A. L. R. 218; Cook v. Hannah, 230 Iowa 249, 297 N. W. 262, and cases cited, Cert. denied 314 U. S. 691, 62 S. Ct. 361, 86 L. Ed. 553; Cook v. Dewey, 233 Iowa 516, 10 N. W. 2d 8.

The two Cook cases, supra, considered curative acts applicable to tax proceedings which had the practical effect of discriminating between classes of taxpayers in the rate of taxation. As pointed out in Cook v. Hannah, lawmakers are powerless to cure by subsequent legislation what they could not have authorized in the first instance. And the power

BLEED THROUGH—POOR COPY

to enact curative laws is uniformly held to be subject to the same constitutional limitations as the exercise of any other legislative power. Anno. 140 A. L. R. 959, 972.

Other courts have sustained classifications for tax purposes no more substantial than this classification of agricultural lands for the purpose of applying a different rate of taxation for schools. We mention a few such decisions. There are sufficient differences between anthracite and bituminous coal to justify a tax on one while the other remains exempt. Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83, 67 L. Ed. 237. An exemption is upheld of tracts of less than 1000 acres from a provision that lands were forfeited by failure for five years to cause them to be entered on the books of the commissioners of revenue. King v. Mullins, 171 U. S. 404, 435, 18 S. Ct. 925, 43 L. Ed. 214, 226. Madden v. Kentucky, supra, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A. L. R. 1383, upholds a state statute which places a tax of 50 cents per $100 on bank deposits outside the state and 10 cents per $100 on deposits within the state. The exclusion of notes secured by real estate mortgages from the operation of a tax on intangibles is sustained in Love v. Silverthorn, 187 Okla. 114, 101 P. 2d 254, 129 A. L. R. 676. A law which exacted a license fee from those engaged in the laundry business other than the steam laundry business but did not apply to women so engaged where not more than two women were employed is upheld in Quong Wing v. Kirkendall, 223 U. S. 59, 32 S. Ct. 192, 56 L. Ed., 350. A tax on margarine containing less thar 20 per cent of animal fat but not if such content is 20 per cent or more is sustained in Ludwig v. Harston, — Wyo. —, 197 P. 2d 252.

IV. The classification of lands used for agricultural purposes may be upheld not only upon the considerations expressed in the preceding Division III but also as in furtherance of a public policy to aid or encourage agriculture. As stated, the burden rests on plaintiff to negative every conceivable basis upon which this statute may be upheld.

A classification is not arbitrary which rests upon some reason of public policy. Hubbell v. Higgins, supra, 148 Iowa 36, 40, 126 N. W. 914, Ann. Cas. 1912B 822; Cook v.

Hannah, supra, 230 Iowa 249, 253, 297 N. W. 262, 264; 1 Cooley, 4th Ed., section 334, page 713; Id., section 335, page 719, where it is said, "Public policy may also warrant a particular classification."

As stated in Watson v. State Comptroller, 254 U. S. 122, 124, 125, 41 S. Ct. 43, 44, 65 L. Ed. 170, 175, "Any classification is permissible which has a reasonable relation to some permitted end of governmental action. * * * It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.' (Citations.)"

The power of state legislature to adjust their tax laws in order to encourage an industry or undertaking deemed vital to the welfare of the state or in furtherance of some related principle of public policy has frequently been upheld.

The governor of the state in commenting upon the report of the school code commission said in his message to the legislature that enacted this law, "We all know that agriculture is Iowa's basic resource. Upon its prosperity depends the prosperity of our great number of small businesses and communities." It was most effectively demonstrated during the depression of the early nineteen thirties that the well-being of the state as a whole is directly dependent upon the welfare of agriculture. The prosperity of our basic industry was no less vital when this act was passed nor is it less vital now when many other countries look to us for food and agriculture must supply their needs.

Our state constitution contains the express mandate, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." Art. IX, 2d div., sec. 3.

We have frequently referred to agriculture as the basic industry in this state. See for example Blume v. Crawford County, 217 Iowa 545, 550, 551, 250 N. W. 733, 92 A. L. R. 757; Clear Lake Co-op. L. S. S. Assn. v. Weir, supra, 200 Iowa 1293, 1298, 206 N. W. 297. The Blume case upholds a law directing county boards of supervisors to appropriate funds raised by taxation to county farm bureaus under certain conditions and says a statute in aid of agriculture "is not repugnant to any constitutional provision." The plain inference from the opinion is that what benefits agriculture benefits the state as a whole. Other decisions gen-

BLEED THROUGH—POOR COPY

erally like the Blume case appear in Anno. 92 A. L. R. 768, 770.

Pertinent here is this language from Carman v. Hickman County, 185 Ky. 630, 215 S. W. 408, 411:

"* * * it is a matter of common knowledge, of which everybody must take notice, that in the agricultural interests of the state lie its chief source of wealth, and that the prosperity of the state springing from this source contributes to the growth and importanec of every other industry in the state, as well as to the comfort and happiness of the whole people; * * *."

It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry serves the public interest. We are not convinced the legislature might not fairly conclude this law in its practical operation will both benefit and encourage agriculture.

We will mention a few of the decisions which sustain tax laws designed to encourage an industry deemed vital to the welfare of the state or in furtherance of some related principle of public policy.

In Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, 1483, which, as stated, sustains a law quite similar to the one now under attack, the court says, "We believe it reasonable for a Legislature, in an agricultural state, to offer inducements to agriculture through its tax laws. (Citations)." And the concurring opinion of Roberts, J., observes, "* * * a classification designed to conserve a source of tax revenue and to foster and promote agriculture and the common good is not arbitrary."

Carmichael v. Southern Coal & Coke Co. (Stone, J.), supra, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 1253, 1255, 109 A. L. R. 1327, 1333, 1335, upholds a statute which imposes upon employers the obligation to pay a percentage of their payrolls into a state unemployment compensation fund but exempts employers of agricultural labor and certain others. This is from the opinion: "This Court has

repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. (citations.) * * * The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficient enterprise. *This Court has often sustained * * * exemption for the encouragement of agriculture.* (citations)." (Italics added.)

Aero Mayflower T. Co. v. Georgia Pub. Serv. Comm., 295 U. S. 285, 291, 55 S. Ct. 709, 79 L. Ed. 1439, 1444, sustains an exemption from an annual license fee of motor vehicles used exclusively in transporting agricultural and dairy products and observers: "We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good."

American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 95, 21 S. Ct. 43, 45 L. Ed. 102, 105, upholds an exemption from a license tax of planters and farmers grinding and refining their own sugar and molasses and states: "The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws."

In Baker v. Town of West Hartford, 89 Conn. 394, 94 A. 283, an exemption from taxation of tracts planted with forest trees is sustained on the theory the beauty of New England scenery is largely dependent upon its forests and the act would benefit the lumbering industry in which every citizen of the state has an interest.

Hermitage Co. v. Goldfogle, 204 App. Div. 710, 199 N. Y. Supp. 382, affd. 142 N. E. 281, upholds an exemption from taxation for a limited period of certain new dwellings as an encouragement to the erection of homes.

A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S. Ct. 599, 78 L. Ed. 1109, and Schmitt v. Nord, supra, S. D. , 27

BLEED THROUGH—POOR COPY

N. W. 2d 910, 912, sustain statutes which impose a tax of 15 and 10 cents respectively upon each pound of butter substitute sold within the state. In the Schmitt case it is said, "Further, it (the legislature) could, we think, reasonably conclude that the fiscal interests of the state would be served by encouraging our dairy industry." See also Ludwig v. Harston, supra, Wyo. , 197 P. 2d 252.

Mississippi Power & Light Co. v. Love, 201 Miss. 676, 27 So. 2d 850, upholds an exemption of certain leasehold interests in oil, gas and other minerals on the theory it would encourage the investment of capital in them and the legislature could assert with some real reason it would be in the interest of the general welfare of the state that investments in such leases be encouraged.

City of Jackson v. Mississippi Fire Ins. Co., 132 Miss. 415, 95 So. 845, 848, sustains an exemption for five years of insurance companies organized under the laws of Mississippi and domiciled there. The court observes that it may have occurred to the legislature there were not enough insurance companies in the state and it would be for the public good to encourage their formation and adds, "Other reasons for the exemption may be imagined."

In Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770, an exemption is upheld of building and loan associations from the operation of a tax on the amount secured by mortgages on the theory it is in recognition of the duty of the state to encourage the acquisition of homes by its citizens.

In Division III hereof we have referred to Apartment Operators' Assn. v. City of Minneapolis, 191 Minn. 365, 254 N. W. 443, 445, which upholds different classifications of property based on use, including homestead property. The principle we think is here applicable is thus stated in the opinion:

"The classification in chapter 359, in so far as it is based upon use, is in line with the policy of both the state and nation as evidenced by previous legislation enated for the benefit and relief of occupant owners of homes. Such classification has a tendency to encourage the use of land for homestead purposes and is in furtherance of a sound public

policy. The stability of government is promoted thereby."

Since we have upheld the classification of lands used for agricultural purposes upon the reasons stated in Division III and this Division IV, it is unnecessary to consider whether, as suggested by the legislative commission that recommended the passage of the act and as argued by defendants, the classification might also be sustained as in furtherance of the reorganization of school districts in order to improve our educational system. We may observe, however, this might well have been one of the considerations that occurred to the legislature in making the classification and we cannot say such conclusion could not be reached in good faith. The test of reasonableness of a classification is good faith of the legislature in making it. 1 Cooley, 4th Ed., section 334, page 714.

V. There can be little question as to the legislative power to subclassify agricultural lands containing ten acres or more separately from smaller tracts of such lands. The power to classify includes the power to subclassify within reason. 1 Cooley, 4th Ed., section 333, page 711; 51 Am. Jur., Taxation, section 179; 61 C. J., Taxation, section 59. Here again, the larger and smaller tracts have certain characteristics in common, just as all classes of property do. But it is obvious there are important differences between them. We cannot say it is wholly arbitrary to draw the line at ten acres.

That some other dividing line might have been adopted does not establish the invalidity of the 10-acre limitation. Hubbell v. Higgins, 148 Iowa 36, 41, 126 N. W. 914, Ann. Cas. 1912B 822, which sustains a subclassification of hotels with ten or more guest rooms; Berg v. Berg, 221 Iowa 326, 334, 335, 264 N. W. 821; 1 Cooley, 4th Ed., section 337, page 720.

As indicated in Division III hereof, Leicht v. City of Burlington, supra, 73 Iowa 29, 34 N. W. 494, upholds a subclassification of agricultural tracts containing more than ten acres for purposes of municipal taxation as against the contention the 10-acre limitation was purely arbitrary. The opinion states, "It is of no use to consider the imperfection of the division. Absolute justice in taxation is unattain-

BLEED THROUGH—POOR COPY

able." This subclassification of agricultural tracts containing more than ten acres, sustained in the Leicht case, has been part of our statutory law for 70 years.

We are content to rest our conclusion the 10-acre subclassification is not arbitrary upon Leicht v. City of Burlington especially and Hubbell v. Higgins and Berg v. Berg, all supra. See also Tolerton & W. Co. v. Board Assmt. and Rev., supra, 222 Iowa 908, 270 N. W. 427, which sustains as nondiscriminatory various provisions of the Iowa Chain Store Tax Act (Ch. 424, Code, 1946). Section 424.4 of that law applies the same rate of tax per store until the number exceeds ten, then steps up the rate at each multiple of ten until the number of stores exceeds fifty, and to all above fifty stores the same rate.

VI. Plaintiff argues the act separately classifies or subclassifies agricultural lands into tracts lying within and those lying without school districts where the millage for the school fund exceeds 15 mills and says there is no basis for such classification. It is true the credit provided by the law is apportioned against the school tax on agricultural lands only in districts where such millage exceeds 15 mills. In a sense, therefore, the act does not apply in districts where the millage does not exceed such figure.

In reality, however, the law separately classifies only lands used for agricultural purposes and those not so used and then subclassifies agricultural lands into tracts containing ten acres or more and those not that large (section 424.2) for the purpose of applying a different tax burden to the lands thus classified in order to apportion the taxes to the actual benefits received, to encourage agriculture and, the legislature may also have felt, to further the reorganization of school districts so as to improve our educational system.

A ceiling of 15 mills for school taxes is placed upon agricultural tracts of ten acres or more and the state, to the amount of $500,000, reimburses the districts in which the ceiling is applied. The South Dakota law, upheld in Great Northern R. Co. v. Whitfield, supra, 65 S. D. 173, 272 N. W. 787, 111 A. L. R. 1475, fixes eight mills as the ceiling for school taxes on agricultural lands

We have held the classification and subclassification of agricultural lands are not purely arbitrary for the purpose of thus apportioning the tax burden. In response to the contention there is an added subclassification because of the 15-mill ceiling which is purely arbitrary, we will say merely that under the authorities cited in Division V it was not wide of any reasonable mark to draw the line at 15 mills even though some other millage might perhaps have been specified.

Perhaps we should point out the 15-mill ceiling applies to any district where now *or in the future* such millage is exceeded. We are therefore not called upon to decide a question similar to one involved in such cases as Knudson v. Linstrum, 233 Iowa 709, 8 N. W. 2d 495; State, ex rel. Welsh v. Darling, 216 Iowa 553, 246 N. W. 390, 88 A. L. R. 218; State, ex rel, Pritchard v. Grefe, 139 Iowa 18, 117 N. W. 13.

VII. Plaintiff contends the act violates Article III, section 31, Iowa constitution, in that it appropriates public money for a private purpose. We will assume, without deciding, as plaintiff argues, the law would violate this provision if the appropriation were for a private purpose, even though it passed each branch of the legislature by a two-thirds vote.

Since, as we have held, this act is a valid taxing measure it is not rendered invalid by the appropriation provision. The public policy in furtherance of which the classification is made for the purpose of applying a different tax burden or a partial tax exemption, if the law be considered a partial tax exemption measure, is sufficient to support the appropriation. An act cannot be said to be for a private purpose where "some principle of public policy" underlies its passage. Whether an appropriation connected with a taxing statute is for a public purpose depends upon whether the remainder of the statute is for such purpose. See 1 Cooley, 4th Ed., section 177.

Without the appropriation made by the act the loss of revenue to the school districts by the imposition of the ceiling of 15 mills would fall upon other property owners in the districts. Under the law as written, however, such loss

BLEED THROUGH—POOR COPY

is borne by the state up to the amount appropriated. The money is taken from one public fund and put into another.

That the appropriation feature of the act does not render it invalid in the respect claimed, see State ex rel. Board v. Snyder, 29 Wyo. 199, 212 P. 771, 777, 782, which sustains a law that exempts from taxation property to the amount of $2000 of certain war veterans and provides for reimbursement by a state appropriation to each county in the amount of county tax on the exempted property. The court holds it a valid tax exemption statute because the legislature might have found it served a public purpose as an incitement to patriotism and encouragement to defend the country in future conflicts and the validity of the law is not affected by the appropriation measure. This from the opinion is pertinent here:

"A lawful exemption from taxation cannot, we think, be regarded as a gift or donation to or in aid of the individual • • • in whose favor the exemption is declared. • • • Indeed, we do not think the statute makes a gift to the exemption claimant even indirectly. The state may be regarded as the sole actor. It exempts the property declared to be exempt, and stands the loss not only of the state tax which would otherwise be collected, but the county tax as well. The money appropriated is public money, whether in the state or county treasury, and by the statute is taken out of one public pocket or fund and put into another."

Our state constitution makes no attempt to define what is a public purpose nor have the courts adopted any inflexible definition. Carroll v. City of Cedar Falls, 221 Iowa 277, 283, 261 N. W. 652. See also 61 C. J., Taxation, sections 20, 21. Plaintiff concedes "what constitutes a public purpose, as distinguished from a private purpose, is sometimes difficult of determination." Numerous decisions are to that effect. The term "public purpose" is not to be construed narrowly. 1 Cooley, 4th Ed., section 175.

Courts are extremely reluctant to hold a tax statute invalid on the ground a tax is laid, an exemption granted or an appropriation in connection therewith made, for a private purpose. "It has been quite uniformly held by the

courts that the determination of such questions inheres largely in the legislative power. Within the zone of doubt, that *is* • • • a public purpose which the legislature deems to be such." Grout v. Kendall, 195 Iowa 467, 477, 192 N. W. 529, which unanimously upholds a Soldiers Bonus Act under which it was proposed to issue $22,000,000 of state bonds and levy a tax to retire them in order to pay a "bonus" to Iowa soldiers and sailors of World War I.

The authorities agree not only that the legislature has the broadest discretion as to what is a public purpose but also that such question is a changing one. See for example State v. Dammann, 228 Wis. 147, 280 N. W. 698, 709; Laughlin v. City of Portland, 111 Me. 486, 90 A. 318, 320, 51 L. R. A., n. s., 1143, Ann. Cas. 1916C 734; Tombstone v. Macia, 30 Ariz. 218, 245 P. 677, 46 A. L. R. 828, 832; 1 Cooley, 4th Ed., section 183, page 394. The tendency of later cases is toward greater liberality in characterizing taxes or appropriations as public in purpose. State v. Dammann, supra, and citations.

A law may serve the public interest although it benefits certain individuals or classes more than others. Carman v. Hickman County, supra, 185 Ky. 630, 215 S. W. 408, 411; State v. Dammann, supra, 228 Wis. 147, 280 N. W. 698, 707, and citations; 1 Cooley, 4th Ed., section 181, page 392.

Carmichael v. Southern Coal & Coke Co., supra, 301 U. S. 495, 515, 57 S. Ct. 868, 81 L. Ed. 1245, 1256, 109 A. L. R. 1327, 1336, states: "• • • whether the present expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court (citations)."

It is well said in 1 Cooley, 4th Ed., section 189, pages 400, 401:

"It is only in a clear case that a statute imposing a tax will be held invalid on the ground that the tax is not for a public purpose. The question is one not 'of exclusive legal logic, but is one more or less of policy and wisdom, properly determinable in the light of public welfare, present and future, in a broad sense, and hence is not a pure judicial law

BLEED THROUGH—POOR COPY

question, except in those cases clearly outside of the twilight zone.'

"Money for a particular purpose may be raised by tax, it is said in one case, if there be the 'least possibility' that it will be promotive in any degree of the public welfare. * * * And still another presents the same idea in language but little different: 'To justify the court in * * * declaring the tax void, the absence of all possible public interest in the purposes for which the funds are raised must be clear and palpable; so clear and palpable as to be perceptible by every mind at first blush.' These are very strong and sweeping assertions, but they are supported by many others equally emphatic and comprehensive, which are to be met with in the adjudications of courts."

And from 2 Cooley, 4th Ed., section 663, pages 1373, 1374:

"An exemption, it would seem, should be made * * * on some ground of public policy, * * * such as, at least, makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made."

Again, from 1 Cooley, 4th Ed., section 175, page 384: "In case of doubt, courts are largely influenced by the public policy of the state, in determining whether taxation is for a public purpose." See also 61 C. J., Taxation, section 20.

As previously indicated, there can be no question it is part of the public policy of this state to encourage agriculture. And the furtherance of the reorganization of school districts in order to improve our educational system would be as plainly part of our public policy. As hereinafter pointed out, it has been the policy of the legislature from its inception to grant numerous tax exemptions.

We are not convinced there is an absence of all possible public interest in the purposes for which the appropriation here is used. At least there is room for argument that both agriculture and the reorganization of our school districts will be encouraged as contributions to the welfare of the state as a whole. At best the question is not beyond the zone of doubt in which the legislative determination is conclusive on the courts.

In support of our holding see, in addition to authorities heretofore cited, State, ex rel. Chase v. Clausen, 110 Wash. 525, 188 P. 538, 14 A. L. R. 1133, 1142, which upholds an appropriation to purchase unoccupied land to be subdivided, improved and disposed of to certain war veterans, industrial workers and others desiring a rural life. The opinion observes, "* * * it cannot be said that the legislature has wrongly decided that to so encourage agricultural development in our state will promote its public welfare. It hardly needs argument to demonstrate that no other industry is so closely related to the welfare of the people as a whole."

VIII. The law in question seems directly analogous to the Homestead Tax Credit Act (Ch. 425, Code, 1946). It is plainly patterned after the homestead law. The public policy served by the former is the encouragement of the industry on which the prosperity of the state largely depends. The public policy served by the other, as stated in Ahrweiler v. Board, 226 Iowa 229, 233, 236, 283 N.W. 889, is the encouragement of home ownership. Perhaps the ownership of homes is more beneficial to the state than the welfare of agriculture. If so, the distinction is largely of degree and not of kind.

While we have not passed directly upon the constitutionality of the Homestead Tax Credit Act it apparently has not been questioned in the courts in the nearly 12 years since its passage (Ch. 195, Acts 47th G.A.). And there are intimations the act is valid in Ahrweiler v. Board, supra, and Eysink v. Board, 229 Iowa 1240, 1247, 296 N.W. 376, 379. At least the Ahrweiler opinion emphasizes the fact the tax credits were not a gift with no consideration requirements in return but resulted in benefit to the public at large by encouraging home ownership. The Eysink case calls attention to the legislature's wide discretion in the matter of classification. As previously stated, in Apartment Operators' Assn. v. City of Minneapolis, supra, 191 Minn. 365, 254 N. W. 443, the power to apply different tax rates to homesteads is directly upheld.

The various soldiers' tax exemption measures (such as sections 427.3, 427.4, Code, 1946, parts of which have stood for many years apparently without challenge) are generally

BLEED THROUGH—POOR COPY

upheld upon somewhat different considerations—that the legislature has the power to discharge, at least in part, the state's moral obligation to those who served in the armed forces in time of emergency and to encourage similar patriotic efforts in the future. The constitutional basis for their enactment seems little, if any, more secure than that for the act in question.

As previously indicated, the legislative policy of this state throughout its history has been to grant numerous tax exemptions. Perhaps such policy is of doubtful wisdom. But of course the question here is one of legislative power, not wisdom.

There is no special limitation in our state constitution on the legislative power to grant tax exemptions. Many state constitutions specify what exemptions may be granted and expressly or impliedly forbid others. 2 Cooley, 4th Ed., section 661, page 1382; see also 51 Am. Jur., Taxation, section 502. Therein lies an important distinction between the present case and a few decisions from other jurisdictions which at first blush may seem in conflict with some of the views herein expressed.

The very next section (427.1) in the Code of 1946 following the act in question exempts from taxation 22 classes of property. Many of these in turn consist of different enumerations. In all, something like 70 items of property are exempt. If we were to follow the argument of plaintiff, many of these exemptions of long standing could not be upheld although apparently they have never been questioned.

If there is no rational basis for applying a different rate or granting a partial exemption from school taxes upon agricultural land, how can the total exemption be upheld of all agricultural produce harvested by or for the taxpayer within the previous year? This exemption has stood since the Code of 1851 and removes from tax liability property of enormous value. What of the exemption in subsection 20, section 427.1, of stock of telegraph and telephone companies and several other designated kinds of corporations? If it be thought these exemptions are for the purpose of avoiding "double taxation," why is not stock of railroads and other corporations included in the exemption? They

pay taxes on their property just as telephone and telegraph companies do. Many other related questions might be asked.

We conclude plaintiff has not demonstrated beyond a reasonable doubt the act in question violates, in the respects claimed, the constitutional provisions she has invoked. The decree is therefore affirmed.

Smith, C. J., and Bliss, Hale, Wennerstrum, and Mantz, JJ., concur.

Mulroney, Oliver and Hays, JJ., dissent.

APPENDIX "D"

IN THE SUPREME COURT OF IOWA

171 47072

LAURA DICKINSON, *Appellant,*

v.

C. FRED PORTER, State Comptroller of the State of Iowa, and J. M. Grimes, Treasurer of State, of the State of Iowa, Allan T. Daykin, County Auditor of Dubuque County, Iowa, and Leo J. Meuser, County Treasurer of Dubuque County, Iowa, *Appellees*

Appeal from Dubuque District Court.—John G. Chalmers, Judge. Filed—March 11, 1949.

Petition for rehearing—Denied.

I hereby certify that the foregoing is a full, true and complete copy of the order made by said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Des Moines, this 2nd day of June, A. D. 1949.

HELEN O. GALVIN,
Clerk.

[SEAL.] *Clerk.*

(3673)

BLEED THROUGH—POOR COPY